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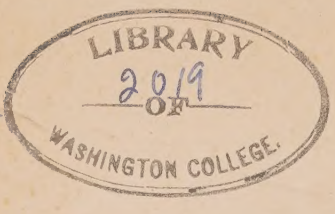

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EBENEZER ROCKWOOD HOAR

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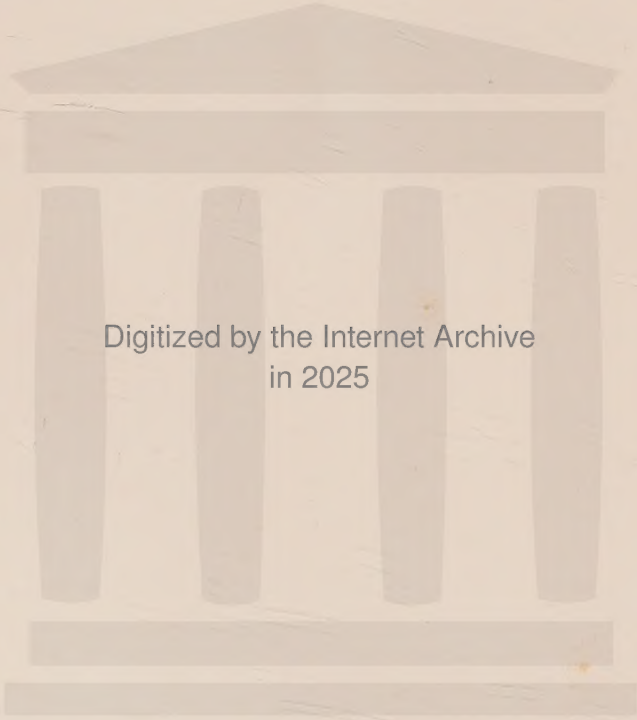

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EBENEZER ROCKWOOD HOAR

A Memoir

BY

MOORFIELD STOREY

AND

EDWARD W. EMERSON

"The Jedge, who covers with his hat
More wit an' gumption an' shrewd Yankee sense
Than there is mosses on an ole stone fence."

J. R. LOWELL

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EBENEZER ROCKWOOD HOAR

CHAPTER I

BIRTH AND EDUCATION

In the ancient graveyard at Quincy in Massachusetts lies buried Joanna Hoar, who, as appears by a tablet over her grave, came to New England in 1640.

The cause of her migration is thus stated in words attributed to her by the subject of this memoir in a letter announcing a gift to Radcliffe College: — "I was a contemporary of the pious and bountiful Lady Radcliffe for whom your college is named. My honored husband, Charles Hoar, Sheriff of Gloucester in England, by his death in 1638 left me a widow with six children. We were of the people called by their revilers Puritans, to whom civil liberty, sound learning and religion were very dear. The times were troublous in England and the hands of princes and prelates were heavy upon God's people. My thoughts were turned to the new England, where precious Mr. John Harvard had just lighted that little candle which has since thrown its beams so far, where there seemed a providential refuge for those who

desired a church without a bishop, and a state without a king.

"I did not, therefore, like the worshipful Lady Radcliffe, send a contribution in money, but I came hither myself, bringing the five youngest of my children with me, and arrived at Braintree in the year 1640." [1]

The two daughters of Joanna Hoar, by marriage with Henry Flint and Edmund Quincy, became the sources of the Adams and Quincy families. Her youngest son, Leonard Hoar, was educated at Harvard College, where he graduated in 1650, and of which he became the President in 1672, the first who was a graduate of the college. Thus early was the relation established between Harvard College and the Hoar family. The eldest son who accompanied her to this country, John Hoar, when he grew up settled in Concord, which was then "the extreme western frontier town of English settlement in New England." Thenceforward the family dwelt in Concord, Lincoln, Lexington, Waltham and Watertown, within a circle of six miles' radius. John Hoar was a lawyer and a

[1] It is said that in the archives of Gloucester there is a record of the grant to Charles Hoare, the father of Joanna Hoar's husband, of a house in Longsmith Street for 999 years, and also of five pounds for going with his horse to Cirencester in 1588 to give warning of the Armada. His son, Joanna's husband, was active in resisting King Charles, and was with other aldermen of Gloucester imprisoned by Archbishop Laud for making a grant from the city to John Workman. The name of Hoar still exists in the southwestern part of England.

citizen, whose thought, speech, and action were fearlessly independent of others in a day when magistrates and ministers were formidable. His humane and brave conduct in sheltering and protecting the poor group of "Praying Indians" of Nashobah, when, in King Philip's War, a cruelty begotten of fear took momentary possession of Concord, is recorded in Walcott's "Concord in the Colonial Period." In 1676, he went into the wilderness and redeemed Mrs. Rowlandson from captivity, a very dangerous expedition. His independence in the matter of church-going, and his remarks on the preaching of Rev. Edward Bulkeley, proved "an expensive luxury" to him, as Mr. Walcott says, for he was fined and temporarily disbarred; but his life reflected honor on his name.

John Hoar's son Daniel was a lieutenant and presumably had some military experience, but Daniel's son John "was a soldier in the old French War and was a prisoner among the Indians for three months,"[1] serving also as a selectman of Lexington. From him came Samuel Hoar of Lincoln, who, as a lieutenant of the Lincoln Company, was at Concord Bridge on April 19, 1775, where also were two great-grandfathers and three great-uncles of Judge Hoar. Lieutenant Hoar served in the Provincial and Continental forces, and fought at Saratoga. Later he was a magistrate and sat in

[1] *Autobiography of Seventy Years*, George F. Hoar, vol. i, p. 20.

the Legislature of Massachusetts, first, as a representative from Lincoln, and afterwards as senator. He married Susannah Pierce, whose father was Colonel Abijah Pierce of Lincoln, one of the town's Committee of Safety in the days preceding the outbreak of the Revolution, and colonel of a regiment of Minute-men.

Their first-born son was Samuel, who through a long life sustained and advanced the simple and brave ideals of Massachusetts. He was an eminent lawyer, a public-spirited citizen, a high-minded and honorable man. He was a Federalist, then a Whig, and when the slavery question became pressing he took a prominent part in founding the Republican party. He represented Concord in the Convention which sat in 1820 to revise the Constitution of Massachusetts; he served one term in Congress; and at the age of seventy-two was chosen to the Legislature of Massachusetts, where he rendered good service to Harvard College by a speech which defeated an attempt to abolish the Corporation and substitute a board to be chosen by the Legislature.

At the age of seventy he was employed by the Governor of Massachusetts, authorized thereto by the Legislature, to test the constitutionality of certain laws passed in South Carolina, under which colored sailors on ships entering the harbors of that state were imprisoned while their ships were in port, and sold to pay their jail fees, if they were not paid otherwise when the ship went off.

Mr. Hoar went to Charleston for this purpose, but was compelled by force to leave the state without accomplishing his object, the Legislature of South Carolina having passed resolutions directing the Governor to expel him, and the actual expulsion being accomplished by a committee of leading citizens. This treatment of Mr. Hoar was one of the incidents which helped to create the bitter feeling that brought on the Civil War.

Let these three sayings about Squire Hoar, as he was familiarly called, find place in the memoir of his son, if only to show heredity. They relate to his domestic, his public, and his professional character. Thomas Starr King said: "Mr. Hoar lived all the beatitudes daily." Alcott, when most disowning responsibility to governments, said: "If they will nominate Samuel Hoar for Governor, I do not know but I will recognize the State so far as to vote for him." Mr. Justice Seth Ames said: "Among my earliest recollections of the administration of justice in the County of Middlesex was the fact that Mr. Hoar appeared to be in every case, so that apparently the only obstacle to his having a complete monopoly of the business lay in the impossibility of being on both sides at once."

His son Rockwood said of him in 1879: "I think the summing up of Father's relations to mankind is that he was to a remarkable degree one of 'the pillars of the Commonwealth.'" Nor

is this word of Mr. Emerson out of place as confirming this judgment: "I had occasion to say the other day to Elizabeth Hoar that I liked best the strong and worthy persons, like her father, who support the social order without hesitation or misgiving."

As Rockwood Hoar's grandfather on the spear side fought to establish the States, united and free, so, on the spindle side, his grandfather was one of those who drew up and fearlessly signed the Declaration renouncing allegiance to the mother country and helped to frame the Constitution of the new republic; for Samuel Hoar found in the daughter of Roger Sherman his helpmate through a long life. She was comely, active in mind and speech, and kind, and many of her son's most striking characteristics were said to have come from her. Roger Sherman's part in his country's history is well known, and he stands a sturdy figure among our leaders in the early days of the Republic, honest, wise, uncompromising, universally respected.[1]

His biography cannot be written here, but a few words of John Randolph may be quoted be-

[1] It is stated that through his mother Judge Hoar was descended from George Minot, an early settler of Dorchester, from John Prescott, the founder of Lancaster, and from Francis Higginson, and through the last from a sister of Archbishop Grindal and a sister of Chaucer. It is also suggested that, on his father's side, he could trace his descent to "Fair Rosamond"; but steps in these genealogical ladders are generally wanting and the gaps are filled with a free hand.

cause they throw some light on Judge Hoar's inheritance. Mr. Albert H. Tracy told Mr. Emerson in 1857 that while he was in the House of Representatives John Randolph said to him: "There is one quality which is very rare, common sense. I have been, boy and man, acquainted with this body twenty-four years, and I have known one man who had it. I would not say I have known but one, and I would not say I have known more than one; but I have seen one man who had it in a remarkable degree; his name was Roger Sherman and he made this remark: 'When you are in the majority, vote; when you are in the minority, talk.'"

It would have been strange indeed if the descendants of such ancestors had not, like Joanna Hoar, prized "civil liberty, sound learning and religion."[1]

The children of Samuel Hoar were: Elizabeth, born 1814; Ebenezer Rockwood, born February 21, 1816, married Caroline Downes Brooks; Sarah Sherman, born 1817, married Robert B. Storer; Samuel Johnson, born 1820, died in infancy; Edward Sherman, born 1823, married Elizabeth Prichard; George Frisbie, born 1826, married (1) Louisa Spurr, (2) Ruth Miller.

To his first son, Squire Hoar gave the name of

[1] A full account of the family genealogy is found in Senator Hoar's *Autobiography*, from which the facts here stated are in large part taken.

his close friend and classmate, Ebenezer Rockwood, "a man of brightest promise and one of the leaders of the Suffolk Bar at the time of his early death."

To account for the early influences at work in that Concord home, Senator Hoar's words about the family should be quoted. "Our ancestors were Puritans in every line of descent, as far as they are known, from the time when Puritanism was first known. The same is true of nearly all the collateral kindred of the Hoar and Sherman families by blood or marriage in every generation."

Squire Hoar's home was a God-fearing home, but a less happy picture is given when one must add that it was a Jehovah-fearing home, and the "jealous God's" exactions, especially on the Sabbath, were severe to childhood. He was a Unitarian, but of the sternest type, while Madam Hoar came from Connecticut and was brought up under "Blue Laws." The gaps before, between and after the long church services were nearly filled with family prayers, Bible-readings, or learning of chapters. Not only was play, but even walking out of doors except to the church, displeasing to the deity. Senator Hoar, in an article in the "Youth's Companion," tells of the "long, dreary and more than Jewish Sabbaths." Some "Sunday books" were allowed, but these were flat or doleful. "'Pilgrim's Progress,' however, with its rude prints, was a great resource." In this

connection the following anecdote told by Judge Hoar of his brother Edward, and by Senator Hoar of the Judge himself, may well find a place. A "brother of mine, who was very precocious, was extremely fond of it, especially of the picture of the fight between Christian and Apollyon, where the fiend, with his head covered with stiff, sharp bristles, 'straddled clear across the road,' to stop Christian in his way. Old Dr. Lyman Beecher, who had his stiff, grey hair cropped short, made a call at our house one afternoon. While he was waiting for my mother to come down, the little fellow came in and took a look up at the doctor, and then trotted round to the other side and looked up at him again. He said, 'I think, sir, you look like Apollyon.'" Mr. Hoar adds that Dr. Beecher thought it a great joke that he should "be compared to a personage of whom, in his own opinion, and that of a good many other good people, he was then the greatest living antagonist."

To all persons of classic studies Squire Hoar suggested a fine old Roman, and his classmates in college used to call him Cato. His son George said of him: —

"He held a few simple beliefs with undoubting faith. He submitted himself to the rule of life which followed from these, and rigorously exacted obedience to it from all for whom he was responsible."

Mr. Emerson, seeing the Squire's tall figure

striding past on his favorite spring walk over the sheltered Lexington Road, wrote in his journal: "The beauty of character takes long time to discover. Who that should come to Concord but would laugh if you told him that Samuel Hoar was beautiful, yet I thought, one day when he passed, that the rainbow, geometry itself, is not handsomer than that walking sincerity, straitly bounded as it is."

A granddaughter recalls the scene at the morning prayers in Mr. Hoar's household; the man and the maids filing soberly into the dining-room after breakfast, taking the chairs placed for them by the kitchen door; Madam Hoar reading a chapter in the Bible, then all kneeling for Mr. Hoar's prayer. There was no familiarity in it, or vain repetition. He thought that the being whom he addressed, like himself, preferred condensed statements: "O Thou before whom angels bow and archangels veil their faces," he sometimes began.

Yet though repression of feeling was the rule lest the love due to the Creator be spent upon the created, and lest they spoil the children entrusted to their care, love and tenderness were none the less in the parents' hearts. The Rev. Mr. Frost, Mr. Hoar's pastor in later years, saw through him as a grandfather, and happily left this witness: "No one saw or admired more the sweetness of a child. He would not invade the right of a child to his independent thought and feeling.

He was peculiarly tender of the rights of children, as well as all classes of the weak and defenceless."

Rockwood, happily, did not suffer by repression. A contemporary record of his early childhood has been preserved, and is quoted here.

HISTORY OF EBENEZER R. HOAR,

Written by his Sister,

ELIZABETH HOAR.

Designed for the use of young persons.

Ebenezer Rockwood Hoar was born in Concord February 21, 1816, of respectable parents. When he was three years old he could read the Bible as correctly as any grown person. He was very passionate at times when he was offended or disappointed.

At the age of about two years he was sent to school to a very pious Instructress, who in a few weeks taught him more than any town schoolmaster would.

At four he excelled his older sister in reading and spelling and the pauses. He had a great affection for his Instructress, and as she was poor, when he had any money given him to spend, it was his delight to carry it to her.

Sometimes he indulged selfishness, and was unwilling to carry anything to her. I will mention an instance of this kind. One day they had a cherry

pie brought upon the table. He had now nearly finished his dinner, and there was a small piece left upon the plate. His mother asked him which he had rather do, carry it to his Instructress or eat it himself? He replied, "I had rather eat it myself"; but he was afterward very sorry that he had eaten it, and the next time he had his choice he requested to carry it to his Instructress. She was sensible to all these proofs of affection, and she often kissed and praised him.

His Instructress was accustomed to have a small party the Saturday after Thanksgiving every year. She invited all her scholars, and among the rest my brother. He had a young companion named Gardiner Davis; he got into a little quarrel with him and bit him most severely.

But I hope as he increases in years he will do better, but I have lately experienced that, as he grew older, he grew worse.

Fortunately he was granted time to justify his sister's hope rather than her fear.

Senator Hoar candidly records how "Dr. Bartlett, one of the worthiest and kindest of men, but who always uttered what was in his heart," said, that "Samuel Hoar's boys used to be the three biggest rascals in Concord, but they all seem to have turned out pretty well."

Perhaps the neighbors looked for a prematurely decorous walk and conversation in the sons of

Samuel Hoar. The simple fact was that here were three highly vitalized boys, enterprising and of fertile minds, who when school was out, their father attending court, their mother occupied with her household cares, roamed free and rejoicing in the Paradise of Concord, not unlike Adam tried more than one variety of apple, and probably were driven from more gardens than he. Their sins, however, were venial.

Through life Rockwood had an astonishing quickness in witty repartee. His sister Sarah (Mrs. Storer) gave this earliest recorded instance of it. When the Orthodox Meeting House was dedicated, in 1825, the services were protracted. Deacon Parkman's daughter said to a little gathering of young people as they came out, "You have had quite a feast," to which Rockwood Hoar, aged about ten, answered, "Yes, we've had *enough*, which is said to be as good as a feast."

Rockwood recorded among the memories of his childhood a romantic day with Henry Vose, afterwards a judge: "When he and I were about eight years old, we had a Fourth of July picnic together, and we made a tent in the woods out of an old door, and what was the most astonishing part of the picnic was that my mother furnished us with a bottle of punch to take with us. That shows the difference with regard to the use of liquor in that age from this. I remember, as a boy, that, when any young child died in the town, the pall-bear-

ers were selected among the young boys, and a room was set aside for them in which a table was set with bottles of rum, whiskey and gin, and each of the boys freely partook."

Children nowadays begin to go to school at six years of age ; when they have parents of advanced ideas, at seven. They may begin Latin at ten or eleven and are fortunate if they have any Greek at all. From Rockwood Hoar's sketch of his life in the book of his Class (H. U. 1835), comes the following : —

"Nothing of historical importance occurred until, at the age of six, I commenced the study of the ancient languages at our Village Academy, which school I continued to attend from that time forth until entering College. There was a succession of instructors, most of them as bad as could reasonably be desired."

His father intended that his boys should not miss, because of their bookwork, the wholesome schooling of Mother Earth in the veritable "elements," and should learn how to win a living from her. So they were sent in turn for a year before they went to college to a kinsman in Lincoln, in whose household the old New England simplicity, frugality and piety prevailed.

Rockwood's visit to Lincoln was when the boy was fourteen years old, and had already been fitted for college. Fate, however, decided not to smile on the farming experiment. The Farrar family, with

which he was placed, still kept up the healthy and economical habit of early New England in going barefoot six months of the year on the farm. Such was the common custom in all rural districts. The new apprentice in farming, the first day of his work, went out into the hayfield, and, barefoot, trod on a scythe, cutting his foot so badly that he was laid up for some time and never quite recovered a perfect foot.

As has been mentioned, he was prepared for college at the old Academy, then supported by persons who wished and could afford to give their sons and daughters better educational advantages than the "Town School" could afford. Among his school-fellows were his sisters, and there was an eager rivalry in scholarship between Elizabeth and Rockwood Hoar and their bright opposite neighbors, the Whitings. But the former were obliged to go to bed early. They devised a way to secure more time for their lessons and yet keep the letter of the household law. They went punctually to bed, but early rising was held a virtue; so they rose quietly while still the hours were small, raked out the brands of last evening's woodfire in the open fireplace, piled on kindlings and fresh wood, and by that cheerful light studied their Virgil and arithmetic, while their parents slept.

When Rockwood Hoar was one of the upperclass boys in the Academy, the master said to him:

"That word is incorrectly spelled. It should be thus" — giving his version. "Where do you find authority for that spelling?" said the boy, the man of precedents in after years. The master named the authority. "He's of less importance than the others who spell it as I do." — "Well, you can spell it as I say on *my* authority," said the master. "The least of all!" observed the saucy boy.

In the summer of 1831, Rockwood Hoar, then fifteen years old, went to Cambridge, as a Freshman. He wrote in his Class-book, when he was four years older, this account of the changes which the College had wrought in him, and his appreciation of the result: —

"I entered college with a high opinion of my own talents and acquirements; expecting that college distinctions and general admiration would follow rather as a necessary consequence of my own transcendent merit, than as the reward of persevering and well-directed exertion. Of the manners, customs, habits of thought and action of the place to which I was going, I knew little or nothing; but expected to find the views, and feelings, and tastes of every one exactly similar to my own; to lead an agreeable life with nothing to trouble or to mortify.

"The effect which college life would have upon such a character, may readily be conceived. I found that there were some pretty severe lessons yet to

be learned; and the struggle in casting off old notions and feelings, was not to be gone through without difficulty. If everything, during the last four years, has not been so agreeable as it might have been, the time has, at least, not been passed without improvement. I have each year been more and more satisfied, that for the test and establishment of character, no better place could be selected than Harvard University.

"Yet my college life has been by no means an unpleasant one. All causes of discomfort have sprung, I am well aware, from myself, and my own *mistakes* alone. A more united, generous class, better, kinder classmates, I could not have had."

Fifty years later he wrote:—

"At the head of the College was the bearer of that great historic name, Josiah Quincy, who, though he heard no recitation and gave no course of lectures, was in himself a text-book. It might be said of him, as Colonel Barré said of Lord Chatham, that 'nobody ever entered his closet who did not come out a braver man.' He did great service to the College, but none more valuable than the impression which his lofty courage, untiring devotion to duty, and public spirit made upon the sixteen classes which were under his charge.

"Of those who managed it fifty years ago, all but one, I believe, are gone. Good, unsuspicious, near-sighted, large-hearted man! How we used

to cheat him at recitation, and how the great service and honoured name of Dr. Peabody puts to shame the memory of such boyish misbehaviour ! "

Ebenezer Rockwood Hoar had for his chum Eben Smith Brooks, from the neighboring town of Stow.

The class of 1835 on entrance numbered about eighty, many of them men afterwards well known for their virtues and abilities. Among these were Amos A. Lawrence, founder of many important factories, and a useful and public-spirited citizen; Charles Henry Parker, long the President of the Suffolk Savings Bank; Dr. Charles V. Bemis, valued practitioner of medicine; George Bemis, the well-known lawyer; Frederick A. Eustis of Milton, beloved and interesting Southerner; Charles C. Shackford, minister, scholar and teacher; Charles W. Palfray of Salem; Edward Lander, Chief Justice of the Supreme Court of Washington Territory; Francis A. Fabens, later a judge in San Francisco. Another classmate, Charles W. Storey, was an especial crony of the Judge and of James Russell Lowell and John Holmes, though Lowell was of a younger class. Richard Henry Dana was obliged to leave the class early because of bad eyes, and to this temporary misfortune America owes her classic "Two Years before the Mast."

But very early in its career the class sustained heavy losses, some of them permanent, from another cause, namely, the Rebellion of 1831,

which is thus described by Charles Francis Adams in his life of R. H. Dana: —

"Before the end of his Freshman year, one of those college difficulties, much more common then than now, and absurdly called 'rebellion,' took place. It soon involved the whole class. It was the familiar story. Some offence had been committed and 'a charity student' was called upon to divulge the name of the culprit. He refused, and, the matter having got into the courts of law, was summoned as a witness. A class-meeting was thereupon held and resolutions to 'sustain our classmates' were passed. The 'Rebellion' naturally followed, breaking out, of course, at evening prayers, when a continued tumult of hissing, groaning and scraping completely drowned the voice of the officiating clergyman. This brought Mr. Quincy from his seat, and two or three tutors from the galleries. 'They watched us closely, but the noise continued throughout the reading and until the prayer commenced, when it stopped. . . . There was open rebellion.' Some of the class were sent away and others were taken away temporarily by their parents. For such as remained the alternative of suspension or expulsion was presented."

As the circles around the vortex resulting from the collision of a class with the Faculty inevitably widened, Rockwood Hoar seems to have been drawn in. His sisters beheld him with alarm step out from the stage-coach, as it stopped at the gate,

and it was an anxious moment when he met his father. The boy however was soon readmitted to good standing.

The Judge gave this account of the Rebellion seen through the perspective of fifty-four years, when he, an officer of the University, touched on it in his speech at the Commencement Dinner: —

"The class of 1835 had a hand in a first-rate rebellion. It was made in defence of our inalienable rights and was conducted with the utmost vigor and activity; and yet from this point of view it looks like something of a failure. The fact is that Mr. Quincy was on the other side, and did not take to it at all kindly. I think we felt about it, when it was over, and had taken from us some of our best fellows, pretty much what a handsome, bright-eyed young fellow expressed to me, whom I met on the Kanawha River at the close of the late war, making his way home from a military prison in Ohio. I said to him, 'Now you are going home to stay, I suppose?' 'Yes,' said he, 'I have had my rights and don't ever want to have any more of them.'"

In the same speech the Judge thus sketched for the younger Alumni the difference between the old times and the new: —

"How we should have compared with the boys of later times, if we had had their advantages, nobody can tell. We never acquired enough of that disastrous Greek, which has blighted the prospects

of the Adams family through so many generations, to do us much harm. I have noticed, by the way, that they seem to have an inveterate habit of turning up in places of trust and honor, in spite of it. We never undertook to beat all our contemporaries at baseball and the like, and then sighed for new worlds to conquer, but I may modestly suggest that in our Senior year, though there was no Hemenway Gymnasium, no athletics, no coaching, two of our class, — one of whom, a sturdy Virginian, is with us at these tables, and looks as if he could repeat the feat without inconvenience, — on a summer's day *walked* the sixty miles from Cambridge to New Bedford."

Of course the games of those days were played *impromptu* and for fun on the Delta, alike by skilled and unskilled, — general public opinion and honor acting as referee and umpire; and not for the credit of the University, afar, in some great arena under the eyes of thousands, by a trained and coached team sifted from the strongest and swiftest.

The rudimentary "Massachusetts game" of baseball existed, permitting "back passers" ("fouls") to the batsman, and allowing the catcher to "out" the base-runner by throwing the ball *at* him, — but Rockwood Hoar was disqualified by near-sight. Foot-ball in sides of indefinite numbers, strictly confined to kicking and running, was everywhere played, but more commonly the ball (leather with

a pig's bladder for nucleus) was punted about at will. The Judge's classmate, Charles H. Parker, writing to him in 1885, says, "I am grieved to hear of your troublesome leg, and am afraid it is the one of ancient memory that used, in 1831, to throw the foot-ball to such a height."

Rowing an old keel-boat on the Charles, very likely fishing at the same time, was also occasionally practised, but there were no races.

In Concord, no one kept horses for pleasure, and chaises hired at livery stables for such purpose were a culpable extravagance. Hence all boys in those days were good walkers, and if Rockwood Hoar wanted to spend a Saturday or Sunday at home, he walked the thirteen miles up the hilly but pleasant Turnpike, or Trapelo Road, as did the Concord boys of the next generation.

It does not appear that he belonged to the College military company, that gallant band with banner inscribed *Tam Marti quam Mercurio*, indicating as close a devotion to martial as to classical studies, to which motto Lowell said should have been added *Atque magis Lyæo*. That this organization was suppressed at this period, and also that society more dangerous to the peace, the "Med. Fac.," might appear from the lament over them in the Class poem of 1835. The Judge confessed once to his eldest son, after the latter was safely through College, that he had belonged to the "Med. Fac.," adding that, fortunately, that focus

of daring mischief was long since dead, which statement his son received with a face of innocent interest covering an inward smile. Mrs. Storer said that her brother Rockwood used to tell of the wretched midnight hours during which he lay on his back in the belfry of Harvard Hall laboring to saw off the tongue of the College bell which called students — alike the pious and the impious — to morning prayers.

But in spite of diversions and probable convivialities, both on a humbler scale than now, the Judge's whole walk and conversation showed that in the first twenty years of his life at home, dame-school, academy, farm and college, he received an education which would grace any citizen of this Republic. The fact was that life, even for children and youth, was far more serious and less distracting than now. The subjects of study were few, sanctioned as valuable by the centuries. Children learned to read from the Bible with its noble English, its wide vocabulary, its stimulation not only of moral sense but of imagination, and its poetic symbolism, instead of from graded readers. They began to study sooner by several years, and worked longer and harder in each year. Children's books were few, too few, but those were good, so their minds were able earlier to enjoy Bunyan, Milton, Shakespeare, Scott and Byron and Burns (all three then new), Young and Thomson, Wordsworth, Johnson and the Essayists, and

from all these their fresh memories were stored, for it was the excellent custom to have children and youths learn passages to recite. So with the languages, they read with maturer, if younger, minds the stories of Roman virtue,[1] Virgil, Horace, and Cicero's Orations, and could enjoy them, for they were not hurried or crowded by a multiplicity of studies in preparation for over-exacting examinations.

Rockwood Hoar's mind had a strong affinity for all that was noble in sentiment, fine in expression, and keen in wit, and what he read he remembered. Among his college papers is a "Dissertation," delivered in his Senior year, "On Making a Study of the Fine Arts a Part of a Liberal Education," an excellent and very well written statement in favor of so doing. Coming from a son of the Puritans, at a time so barren of art in New England, one passage is remarkable. Speaking of the stern iconoclasm, and repression of painting and fine music by the leaders of the Reformation, he says: "They swept away wheat and tares together, and, with the sinfully worshipped images, banished from religion all that support which it is one of the highest objects of the Arts to afford." In the same way this country boy urged a point of first importance, ignored to-day by many masters of brush or chisel, — the need of filling the

[1] The admirable *Viri Romæ*, now discarded, for alleged defect in Ciceronian style, in favor of some useless "Gate to Cæsar."

mind with high ideas and sublime images, rightly to practise or appreciate Art. His own wide acquaintance with the best thought of mankind as guarded for us in classic literature, ancient or modern, prepared him to appreciate the masters, had time and opportunity permitted. Lacking these, he remained something of a Philistine in art to the end, and cherished an iron dog as an ornament on his doorsteps.[1]

Of his college life little remains to say. In his Junior and Senior years he attracted the attention of Edward Tyrrel Channing, then the valued Professor of Rhetoric and Oratory, and received the highest marks for English Composition. He also won the second Bowdoin prize for an essay, and at the Exhibition in his Senior year had, as his part, the English oration, taking as his subject "Reverence." His part at Commencement when he graduated was an English oration on "The Christian Philosophy ; its Political Application."

Only fifty-two of his class received degrees at Commencement, largely a result of the "Rebellion," but five more were allowed their Bachelor's degree years later. Rockwood Hoar was third scholar. The refined and attractive Harrison Gray Otis Blake of Worcester, later Thoreau's near friend, was chosen Orator by a large majority,

[1] The Judge used to justify this unhappy combination of painting and sculpture by saying that it was "Nature's own truth," since once he found a flea upon it.

but his modesty made him decline, and Charles C. Shackford, later a minister, and a professor at Cornell University, was then chosen. Blake, however, gave the Latin Salutatory. Benjamin Davis Winslow was the Poet. Hoar was chosen a member of the Class Committee. Sixty years later, his classmate Palfray of Salem wrote, "Judge Hoar was, from the first, the pride and ornament of his class — *facile princeps.* His affection for his classmates too was as remarkable as it was undiminished." Throughout his life on many occasions and in many ways he showed his never-failing loyalty to the College with which his family had so long been associated.

On leaving College, Hoar wrote in the Class Book, "With regard to the future, I have for some time determined upon the profession of the Law; and hope to contribute my humble efforts to sustain the reputation of the Class of 1835. In the true professional style, — if my friends and the public have at any time occasion to make use of my services, I shall be happy to wait on them — 'for a consideration.'"

But first he had the valuable experience of leaving Massachusetts and all boyish social ties, and looking life in the face by earning his living.

The graduate of nineteen went to take charge of a school for girls in Pittsburg, Pennsylvania, then practically as far away as Oregon is now. It is clear that the year was valuable to the young

teacher, and left pleasant memories. He probably helped many pupils; certainly was worth much to one. There was in the school a child, Lois Wade, who afterwards became Mrs. Campbell of Pittsburg, and the step-aunt of Mrs. Margaret Deland, the novelist. This lady writes that Lois was then only nine years old, and considered a dull little girl, but to the surprise of her parents, Mr. Hoar urged her to study Latin. "Her later remarkable linguistic ability proved him to have been quite right. Indeed, her intelligence and power dated from that time, and I know she felt the deepest sense of obligation to a teacher whose insight into character was an inspiration and an awakening — a sense of obligation as well as admiration and love which lasted until her death, sixty years from that day when he put her Latin Grammar into her hands."

Fifty-four years passed away, and Judge Hoar, on his Golden Wedding day, received a letter from the elderly Mrs. Campbell, in which she said, "While congratulating you and Mrs. Hoar on this long life together, may I express to you my most sincere thanks for all that you did for me during the year that you spent in Pittsburg? It was a turning point in my life, and I have ever since had reason to be grateful to you, not only for what you taught me, but for the stimulus and encouragement you gave me for study after you ceased to be my teacher."

There is a letter from the Judge written to a clergyman in Pittsburg, speaking pleasantly of his teaching days there, and accompanied by a gift of one hundred dollars towards a lot for a Unitarian Church in that great city, dark and noisy with its enormous work-shops, grown out of the little settlement at old Fort Duquesne.

To see a little more of the newer world beyond the Appalachians, the youth on leaving Pittsburg travelled to Kentucky. He used to tell that, having tarried overnight at a wayside tavern, he rose early, and, when he came down, a Kentuckian who was staying there ordered a gin cocktail and invited the young fellow-lodger to drink with him. The New Englander answered that he did not want a cocktail before breakfast, thus offending his benevolent friend, who remarked that seventeen was about the right number to take before that meal. He had the interesting experience of hearing Henry Clay speak to a vast audience in the open air; also of being robbed on a river-boat; but got safely back to Concord.

Once more in the old home, he began the study of law in his father's office, a little one-storey building, painted white, on the Sudbury road where it branches from the Main Street. The restful simplicity of our village life then could hardly now be matched in Eastern Massachusetts. A glimpse of it is given in a letter from the acolyte lawyer to the little ten-year-old Lois Wade at Pittsburg: —

"I am settled quietly at home for the winter, *how* quietly you, who live in the bustle and noise and business of such a city as Pittsburg, can hardly imagine. Our little village is situated on a plain surrounded by woods and low hills; a small river, with a current scarcely perceptible, and with meadows on both sides, flows gently through it, and, as I walk through the street to my office, I hardly see a moving thing, unless now and then some one coming out of a shop and shutting the door carefully behind them. And here I live and study all day, for from a teacher I have become a scholar, — and in the evenings read or visit or go to lectures, — for there are now few villages in New England so small that they do not have a course of literary, historical, or scientific lectures each winter, in which the educated men, and among them some of the first names in our land, communicate of their knowledge to all classes of the people.

"I am now reading, with a young lady, a book, one of the pleasantest and most interesting that I have read for some time, and which I hope you will sometime read also. It is called the 'Phædo,' and contains an eloquent account of the conversation, instructions and death of Socrates, — you must not be surprised when I tell you that it is written in Greek." He speaks pleasantly of the school and scholars, and says, "You must tell me about these things, . . . for, though so many hun-

dred miles off beyond the blue Alleghanies, I feel as much interested in all that you are doing, and think of you, as a part of my flock, as much as ever."

A certain guarded propriety strikes one in the end of this sentence addressed by a gentleman in his twentieth year to a lady of ten, fortified withal by the account of the Plato readings with another, presumably Deacon Whiting's accomplished elder daughter, then in her teens. Plato, even in such charming company, did not win him from the law, for Justice Gray tells us that when he read Kent's Commentaries he verified every citation and read every case cited, using the library in Concord so far as it contained the reports, and getting them elsewhere when it did not. Such a careful study of Kent was in itself a legal education.

His studies were continued at the Law School at Cambridge for eighteen months, and then for six months in the office of Emory Washburn at Worcester, where he was admitted to the bar on September 30, 1839, after receiving the degree of LL.B. from the Harvard Law School at the preceding Commencement.

While Rockwood Hoar was studying law in Cambridge, the following record was made in the Faculty's Book there: "Voted, that Lowell, Senior, on account of continued neglect of his college duties, be suspended till the Saturday before Commencement to pursue his studies with Mr.

Frost in Concord . . . and not to visit Cambridge during the period of his suspension." [1] This was for the period of three months, yet he made lasting friendships there, one of which threatened to go further. In August, in a letter to George B. Loring, he thus speaks of it: "I do not know what to do with Miss ——. She runs in my head and heart more than she has any right to, but then —

A pair of black eyes
Of a charming size,
And a lip so prettily curled, O!
Are enough to capsize
The intentions wise
Of any man of the world, O!
. . . . . .
Oh a gentle heart
Is the better part
Of a lovely woman's looks, O!
And I totter on the brink
Of love when I think,
When I think, when I think of Miss B——, O!

"By Jove! I like that better than anything I've written for two years. I wrote it *con amore* and *currente calamo.*"

The fair one thus celebrated was Caroline, the daughter of Squire Nathan Brooks. Two years earlier, when Rockwood Hoar had spent his days in study at his father's office, she was, no doubt, playing about her father's yard exactly opposite;

[1] See *James Russell Lowell*, by Horace E. Scudder, from which also are quoted the verses following.

and in the evenings, when he was reading Plato with another, she was in bed. Lowell's time of rustication was so short that he escaped complete enthralment, but Rockwood at Cambridge heard his mates in the Law School talking of a visit to Concord and of a young girl there who had sung to them and fascinated them. "About whom are you talking?"—"Caroline Brooks."—"I think I had better go up and take a look at her." He did so; to her lover's good opportunity, strong and clear mind and faithful industry she added an incentive, and on November 20, 1840, he married Caroline Downes Brooks.

The young people began their domestic life in the eastern half of the double house on the Main Street, close to Squire Hoar's, which furnished shelter in turn to many new-married couples. The marriage proved a very happy one, and the rising lawyer greatly enjoyed domestic life, although Mrs. Hoar's health was not good for many years. In due time seven children were born to them, namely, Caroline, Sarah Sherman (died in infancy), Samuel, Charles Emerson, Clara Downes, Elizabeth and Sherman.

CHAPTER II

LAW AND POLITICS

To one who knows only the Concord of the last half-century it might seem strange that an able and aspiring young lawyer should choose this little country town for the centre of his work. It is indeed recorded that an eminent lawyer of an elder day whose associations were all with Boston, selected Billerica as the place in which to open his first office. When asked why he chose Billerica, he said, "Well, I had to break into the world somewhere and Billerica was the weakest spot I knew." This was not young Hoar's reason for choosing Concord. Boston, with but a small fraction of its present population, was as far off then as Springfield or Hartford is now, according as one took the express or accommodation stage-coach, the former running but three times a week. Concord, a shire-town, was an important centre, especially for the through traffic by team; and the farmers passing on their wagons, or the keepers of the large country stores, needed or desired legal advice.

Twice in the year the session of the court for from two to four weeks gave dignity and importance to the town. Wesson's, Bigelow's and Shepard's taverns were filled with guests, and their

stables with horses, while the chaises and buggies solidly packed on the Common occupied perhaps an eighth of an acre. When the Court House bell clanged its loud summons, the sheriff and his deputies in uniform, with sword and long staves respectively, waited upon the Judge at the tavern door, and escorted him to the court, followed by the members of the bar in due order, and the constable brought the manacled prisoners from the jail opposite. All the leaders of the bar appeared at Concord in those days, and the citizens flocked to hear them argue and to admire their skill in fence. Indeed court, Muster and Cattle-show weeks broke the monotony of village life, which, in the absence of such distractions, moved no faster than the oxen then in general use.

It is not surprising that Rockwood Hoar met with immediate success at the bar. He was well introduced by the established reputation of his father and his family connection. He possessed moreover in unusual measure the qualities which the old-fashioned citizens of Massachusetts prized,—common sense, directness, honesty and a keen wit. He understood the tastes and feelings of the juries whom he addressed, and they understood him. They believed what he said, approved his way of saying it, and enjoyed his quick thrusts at his opponents. He was a sound adviser and a good fighter. He won the confidence of clients, and their confidence was justified by results. He won a high

position at the Middlesex bar when it was recognized generally as an able and hard-fighting bar, and numbered among its members were Albert H. Nelson, Chief Justice of the Superior Court of Suffolk; Josiah G. Abbott of the same court; Judge Thomas Hopkinson; Judge Seth Ames; George F. Farley; Tappan Wentworth; Ephraim Buttrick; Charles R. Train and Benjamin F. Butler.

In 1842 the young lawyer was associated with Daniel Webster, Franklin Dexter and Rufus Choate in the defence of William Wyman, who was indicted for embezzling the funds of a bank in Charlestown. This case was tried three times, first in Concord, then in Lowell, finally in Concord. The first trial resulted in a disagreement, the second in a conviction which was set aside by the Supreme Court. Senator Hoar says that as they were going into the Court House on the morning of the third trial "Mr. Choate said to Mr. Hoar, whose chief part in the trial so far had been . . . hunting up authorities and taking notes of the evidence, 'You made a suggestion to me at the last trial which I did not attend to much at the time, but I remember thinking afterwards that there was something in it.' Mr. Hoar replied, 'It seems to me that Wyman cannot be convicted of embezzlement unless the funds of the bank were entrusted to him. They must either have been in his immediate possession, or under his control. There is nothing in the office of Pre-

sident which involves such an authority.' The facts alleged against Wyman were that he had authorized the discount of the notes of some friends of his who were irresponsible, and that he had in some way shared the proceeds. Mr. Choate seized upon the suggestion. . . . When the Government case closed, the counsel asked the Court to rule that, as the funds were never entrusted to the possession of Wyman, he could not be convicted of embezzlement. The Court so held and directed an acquittal."

This case, so vigorously contested by such eminent counsel, was a *cause célèbre;* but, as Senator Hoar adds: "This is another instance, not unusual in trials in court, of the truth of the old rhyme with which the readers of Quentin Durward are familiar —

> 'The page slew the boar,
> The peer had the gloire.'"

It was in the course of this trial that Squire Hoar said to his son when he came home at night: "Well, Rockwood, how is Mr. Webster to-day?" to which the son replied: "Mr. Webster, father, has a bad cold, and it seems to have settled on his temper." *Tantæne animis cœlestibus iræ?*

As all Americans should, Hoar felt his responsibility as a citizen and bore a man's part in the politics of the time. The great Harrison campaign of 1840 offered him his first opportunity, and in

the spring of that year he was a delegate to the Whig Young Men's Convention for Middlesex County and was chosen secretary of the convention. In the autumn he spoke frequently for the Whig candidate and at some meetings in his district was the principal speaker. He also delivered an address, "The Dignity of Labor," at the Middlesex Agricultural Exhibition on October 7, 1840, of which a contemporary journal said it "was a production of much merit, in which the orator ably vindicated the usefulness, respectability and dignity of labor." Thus he began to lead his fellow-citizens almost as soon as he was admitted to the bar.

Judge Keyes bears witness to his executive ability at this time, which he says was shown in connection with the great political gathering of Whigs at Concord during the Harrison campaign, when not only were the roads filled, but great numbers came on canal-boats poled up from the Merrimac and even from the Mystic by the Middlesex Canal. A bridge of these boats was made at the Battle-ground, and the "Hard Cider Clubs" literally "kept the ball a-rolling through Concord streets with cries of 'Tippecanoe and Tyler too.'" The young lawyer Hoar was chairman of the executive committee and did himself credit. Again, in 1844, in the campaign between Polk and Clay, his abilities were tested.

In the same decade was a celebration, more quiet

and of far-reaching purpose, a sober festival of the workers in the temperance movement, then surely justified in New England and which did great good. Temperance seems then to have been used in its right sense, and not as equivalent to *total abstinence.* This gathering was held in Deacon Brown's pretty pasture, circled with a ridge of oaks and pines, "Sleepy Hollow," then reached only by a lane. The chief marshal of the occasion, glorious on horseback, presumably with beaver hat, broad blue ribbon, and white trousers, was young Mr. Hoar, — the nearest approach to military display ever known of him.

The stream of events was bearing the country rapidly toward the inevitable rupture between the advocates of slavery and its opponents. The rapid growth of the free North and West threatened to give the friends of freedom the control of the Senate, and hence the slave owners wished to restore the balance by adding slave states on the south. To carry out this purpose they were determined to annex Texas, and this movement was resisted vigorously in the North. The election of Harrison quieted the agitation, but when Tyler succeeded to the Presidency, the situation was changed and in 1844 Calhoun as his Secretary of State concluded an annexation treaty with Texas. This was defeated after an exciting discussion in June, 1844, and in the autumn of that year Polk was elected on a platform favoring immediate an-

nexation. This was accomplished by joint resolution in March, 1845, and Texas being now territory of the United States, the question arose whether it should be admitted as one or more slave states. As the Whigs had a majority in the House of Representatives, this could be prevented if they stood together, and hence an agitation immediately began against the admission of Texas.

Until the annexation was accomplished, the Whig party of Massachusetts under the lead of Webster and Winthrop had been united against it. When however Texas had been annexed, these leaders seemed disposed to abandon the contest and to take up other issues, and hence the autumn of 1845 was a very critical moment in the country's history as well as in the politics of Massachusetts. It was then that Charles Sumner first took part in a political meeting, and expressed in public his opposition to slavery.

In any event Rockwood Hoar could not have helped being interested in the contest against the annexation of Texas, to which the Whig party was so strongly opposed, and doubtless his feelings were more strongly stirred by the expulsion of his father from South Carolina, which occurred in November, 1844. This brought directly home to him the lawless intolerance of the slaveholder, and cannot have failed to move deeply a man with his ingrained regard for freedom and for law. In January, 1845, his father and he both

signed the call for a great anti-annexation meeting, which was held in Faneuil Hall on January 29th.

Early in September, a call was issued for a meeting in Concord to "take into consideration the encroachments of the Slave Power and to recommend such action as justice and patriotism shall dictate to resist those encroachments, and assist the progress of events so rapidly tending to that fearful consummation when slavery shall have complete control over the policy of the government and the destinies of the country."

At this meeting E. R. Hoar was one of the "business committee" and was made chairman of a committee to confer with the general committee appointed by the anti-Texas convention held the preceding January in Faneuil Hall, and, with other opponents of annexation, to arrange for meetings and in other ways to organize an efficient resistance to the final consummation of that movement.

The resolutions adopted declared: —

"We solemnly announce our purpose to the South, and to the execution of that purpose we pledge ourselves to the country and before Heaven, that rejecting all compromise, without restraint or hesitation, in our private relations and in our political organizations, by our voices and our votes, in Congress or out, we will use all practicable means for the extinction of slavery on the American Continent."

The Boston "Post" spoke of the meeting contemptuously, and from its article the following extract is taken.

"Wilson and Hoar, Jr., did indeed defend their milk-and-water resolution, which looked one way and rowed the other, but no defence of Mr. Winthrop did they dare to utter in that assemblage of spirits, black, white and gray."

This meeting was followed by two others in Concord, on October 1 and October 21, at both of which Hoar spoke, but of these speeches no record seems to have been preserved, doubtless because, as E. L. Pierce tells us: —

"The Whig journals of Boston, notably the 'Advertiser,' while assiduous in reporting Whig meetings, ignored these popular protests against this creation of a slave state out of foreign territory acquired for the purpose."

The tone of the meetings is, however, indicated by the following resolution, which was offered by Mr. Garrison, and adopted unanimously on October 21: —

"*Resolved*, that, should the perfidious and illegal act of Texas annexation be consummated at the next session of Congress, it will be the constitutional duty of the legislature of Massachusetts promptly to declare in the name of the people that such act is null and void, and can never receive their sanction, be the consequences what they may";

and by the resolution reported by the "business committee" and also adopted: —

"*Resolved*, that we will not, by our votes or our influence, help to sustain any party or any candidates for office who will not, on all occasions, oppose a manful resistance to the encroachments of slavery."

This movement culminated in a great meeting held at Faneuil Hall on November 4, 1845, over which Charles Francis Adams presided, and which was addressed by Palfrey, Sumner, Dr. Channing, Phillips, Emerson and others. This meeting appointed a committee to further its objects, and on this Hoar was associated with Adams, Sumner, Phillips, Garrison, Channing, Whittier and others. The protest was unsuccessful, for Texas was admitted in December, 1845, with a slave constitution; but it was a victory which was worse for slavery than a defeat, since it laid the foundation for the active opposition to slave-holding aggression which ended in civil war and emancipation.

The Anti-Texas Committee emphasized this result in an address written by Charles Francis Adams and issued when the contest was over, which closed with the words, "The contest about Texas has been fought and lost, the Constitution trampled under foot, and the Spirit of Liberty is driven from her natural home; but unnumbered fields yet remain, each of which should be the sub-

ject of a greater contest than the last, until either the institution of slavery shall be overthrown, or else the Samson of the North, intoxicated by the cup of worldly prosperity, and enfeebled by his dalliance with the harlot . . . shall ultimately perish." In issuing this address the members of the committee took the vow of eternal hatred to slavery, which, like Hannibal's oath against Rome, was to bear fruit in blood.

Hoar was a candidate for the State Senate at the autumn election of 1845, but failing to receive a majority of the votes cast, which was then necessary to elect, he was chosen by the Legislature in joint convention. He was an active and influential member of the Senate, and in one speech made an enduring contribution to the history of the time. Towards the close of the session Henry Wilson introduced resolutions against the annexation of Texas, and urging opposition to slaveholding aggression. These were vigorously opposed in the interest of the cotton manufacturers, one of whom said that Massachusetts must submit. Hoar replied with vigor and said among other things: "It is as much the duty of Massachusetts to pass resolutions in favor of the rights of men as in the interests of cotton." It is said that during the debate he was taunted with being a "Conscience Whig," to which he replied that he would rather be a Conscience Whig than a Cotton Whig. However this may be, it is certain that from what

he said at this time came the names "Cotton Whigs" and "Conscience Whigs" thereafter used to designate the two factors into which the Whig party was divided by the annexation and admission of Texas.

The unjustifiable course of President Polk's administration in forcing war upon Mexico immediately after the admission of Texas gave rise to the next struggle between the two wings of the party, and served to widen the breach. A bill providing men and money to prosecute the war, with a preamble reciting that the "war existed by the act of Mexico," was passed in the House of Representatives in May, 1846, but under the lead of John Quincy Adams all the Massachusetts members except Mr. Winthrop and one other voted against it. Mr. Winthrop was attacked sharply for this vote by Mr. Adams and afterward by Mr. Sumner, and the sentiment of Massachusetts disapproved the war. The difference was felt in the state convention of the Whig party, held on September 23, 1846, where the question was whether the party should or should not take a distinctly aggressive position against slavery. Rockwood Hoar, who was a member of the Whig State Committee, had the resolutions drawn by that committee amended, so as to make them more positive on the slavery question, but took no prominent part in the convention. Indeed, the resolution of the committee was in itself so positive that he could

hardly have deserted his associates on account of it.

In the autumn of this year he was instrumental in securing the nomination of Dr. Palfrey by the Whigs as representative in Congress from the Middlesex District, and in overcoming the latter's reluctance to serve. Dr. Palfrey wrote to him declining the nomination at first, and Mr. Hoar replied, urging that it was his duty to accept it, closing his letter thus : —

" We want for representative at this time a man of principle, a man of energy, a man of courage. We want a man who entertains sound views upon the great question of the age, and who has the power to express and enforce them with ability and effect. In short, my dear sir, we want you."

Dr. Palfrey yielded to his argument, and failing to receive a majority at the general election, was chosen by a small majority at a special election held shortly afterward. With the election of 1846 the immediate opportunities for political action ceased for a while, and in the summer of 1847 Mr. Hoar took a vacation, crossing the ocean for the only time in his busy life.

In Thomas Carlyle's letter to his friend, Mr. Emerson (May 18, 1847), he says : —

" About a week ago came your neighbour Hoar, a solid, sensible, effectual-looking man, of whom I hope to see much more. So soon as possible I got him under way for Oxford, where I suppose

he was last week; *both* Universities was too much for the limits of his time, so he preferred Oxford; and now, this very day, I think, he was to set out for the Continent, not to return till the beginning of July, when he promises to call here again. There was something really pleasant to me in this Mr. Hoar; and I had innumerable things to ask him about Concord, concerning which topic we had hardly got a word said when our first interview had to end. I sincerely hope he will not fail to keep his time in returning."

In Mr. Emerson's answer, dated Concord, June 4, 1847, he says: "It seems you are not tired of pale Americans. You have sent one country-senator where he wanted to go, and to the best hospitalities, as we learn directly from him."

Judge Hoar told a friend that, when he was in Rome in 1847, and his party were going to leave next morning, one of them at dinner said, "Well, you haven't swum across the Tiber yet, after all"; for the Judge had wished to know just what the feat of Horatius Cocles was, and had said he meant to do it if he could. Next morning he arose at four, and after much difficulty in getting the porter to unbar and unlock the doors, went out along the Corso, through the Porto del Popolo, and down to the river-bank above the city where houses were few, stripped and swam the Tiber (possibly ten rods wide), but found the current strong, and was swept down so as to make a long diagonal,

much more than he had calculated on. He then walked far up the bank, and swam back to as near his clothes as possible without exhaustion, and at breakfast was able to say to the company, "If I had n't swum the Tiber, as you said, last night, I have now swum it twice."

To his son Samuel his father said that an Englishman stood on the bank, and wrote home that the American did this to show that what tired Cæsar was not so much of a feat after all. At which remark Judge Hoar was indignant.

His holiday in Europe was pleasant, but short. His active mind stored many impressions of the past, but he returned to America and threw his manhood into the present, the struggle for right against temporary gain. Richard H. Dana, his valiant companion in this cause, said of that period, "The spindles and day-books are against us just now, for Free-Soilism goes to the wrong side of the ledger." Soon after his return, on the meeting of Congress, Dr. Palfrey justified Mr. Hoar's opinion of his courage by voting against Mr. Winthrop, the Whig candidate for Speaker of the House, an act which exposed him to the fiercest criticism, satirized by Lowell in the "Remarks of Increase D. O'Phace, Esquire," one of the Biglow Papers. The Conscience Whigs, as a rule, approved Palfrey's course.

The following letter from his stanch supporter, Mr. Hoar, written on December 17, 1847, shows

how he regarded the matter, and something of public opinion as seen by a keen observer.

"You must feel some desire to know how your votes have impressed the people of No. 4, and if you have not already heard in full from other friends, perhaps I can add something. Some of our loudest talking politicians are furious in their denunciation, follow the pattern of the 'Atlas' — and talk about *treachery, meetings to request you to resign* — and all that. None of these men did anything to promote your nomination or secure your election, unless the giving a reluctant and complaining vote might come under the latter, and half of them have not even that sin to repent of. I don't care for them a whit, for we have had to encounter an undercurrent of their adverse influence for some time, and I prefer it above board.

"Next is a class who are led in their opinions by the 'Atlas,' and by these same talking politicians, and who scold in concert, merely because scolding is the great staple of all the noise that comes to their ears at present, and who would go with us, if we turn out the strongest, with equal heartiness, by-and-by. Then there is a large class comprising some of our most reliable and generally well-disposed Whigs, who feel great grief and can hardly be comforted. They had hoped things would have gone along smoothly. They disliked Slavery and the War, but they loved the Whig party; and they fondly trusted that opposition to those

and devotion to this might somehow rub along together. They say you ought to have yielded a little, and not be quite so impracticable; say that it will make difficulty, that we shall not be able to elect you again, nor any Whig, because of the division this will make in the party. These together make up most of the talking public, but on the other hand there are not a few, and among them some that the Whig party in the 4th would sorely miss, who say they have no idea of having you sacrificed to State Street fury — that if there is a meeting to be called, they should like to attend it, and that it might turn out differently from the callers' purpose; who think that you were sent to Congress for many purposes quite as important as supporting Mr. Winthrop, and intend to wait for other questions to decide upon your character as a public man. There are some, too, who like your independence, and I suspect among the bulk of the people, this feeling prevails as much as any.

"I will add my own opinion briefly. I think I should have voted for Mr. Winthrop, with my view of the risk attending a different vote, though I should not have supported him in caucus; but I respect the principle which induced you to do otherwise, and fully sympathize with the effort which it must have cost you to do what appeared to you right on the occasion, and about which you are very likely more correct in your judgment

than I am. You will perhaps consider it little praise when I add, what I have said many times since your vote, that I would much rather be represented by Mr. Palfrey than by Mr. Winthrop, and that if the latter had as few political sins or errors to answer for as you have, he would stand much higher in my esteem than he does at present."

The year 1848 was an exciting time, especially for the Whigs of Massachusetts, and from the beginning Hoar was a leader. He was the man to present the cause of right with aggressive courage, logically, and with what Sumner always lacked, — a saving sense of humor. Governor Claflin, recalling him "in the stirring times of '48," said : —

"He was the idol of the young men, who early realized his surprising ability. No one did more to give tone to Free-Soilers. His unselfishness made his counsel much sought in the formation of a new party. Legal questions often came up, and all eyes turned to him as the man to be trusted."

Daniel Webster, of whom the state was very proud, was a candidate for the Presidency, and the Whigs of the Commonwealth were enlisted in his support. Till that time he had opposed slavery, and in this very year he said in the Senate : —

"My opposition to the increase of slavery in this country, or to the increase of slave representation in Congress, is general and universal. It has no reference to lines of latitude or points of

the compass. I shall oppose all such extension and all such increase at all times, under all circumstances, even against all inducements, against all combinations, against all compromises." [1]

Hoar admired and believed in Webster, as did all but the most radical of the Conscience Whigs.

Charles Sumner's letter to Dr. Palfrey, April 23, 1848, throws some light on the situation.

"There is a movement at the State House to nominate Webster. E. Rockwood Hoar and Charles R. Train promote it. The former invited me to favor it. I told him that I could not regard Webster as the representative of our sentiments; that he had been totally remiss on slavery and the war. It was proposed to issue an address setting forth the Wilmot Proviso as the platform, and showing significantly that Taylor would be opposed in Massachusetts. All these I welcomed; at the same time I said that, if Webster were presented as a candidate on these grounds, our present policy would be silence; we could not oppose him, nor join in introducing him as a candidate. Hoar says that the address and resolutions are well drawn and satisfactory. He has evidently felt the fascination of Webster's presence. Webster told him that he would not oppose the nominee of the Whig convention, but that he would never call on the people to support Taylor, though he might be nominated." [2]

[1] G. F. Hoar's *Autobiography*, p. 145.

[2] E. L. Pierce's *Memoir of Charles Sumner*, vol. iii, p. 164.

Hoar threw himself into the campaign with courage and energy. On March 29, at the Whig convention in his district called to choose delegates to the National Convention, he offered a resolution introduced by Dr. Palfrey at the State convention of the previous year, declaring that "in the opinion of this convention the Whigs of Massachusetts will not vote for any person for President or Vice-President who is not known by his acts or declared opinions to be opposed to the extension of slavery." At this convention he was a candidate for delegate, but was defeated, very likely because of his position as expressed in this resolution, which was voted down by the convention. Before the Whig convention met at Philadelphia he had, with a party of young Whigs, called on Webster, and, in reply to a speech from him, Webster had said in substance that he would not support Taylor if he were nominated, speaking of him as "a swearing, fighting frontier colonel." As the day fixed for the convention approached it became more and more apparent that Taylor would be nominated, and Hoar prepared an address to be issued at once if this happened, which was approved at a meeting held on June 5, 1848, by C. F. Adams, Sumner, Henry Wilson, S. C. Phillips, F. W. Bird, and others. It was a call for a convention to be held at Worcester in Massachusetts of all persons opposed to both Cass and Taylor. Taylor was nominated on June 9, and

on the 10th the address was issued, signed by Samuel Hoar, Adams, Sumner, E. R. Hoar, and many others. It is quoted here as the first piece of Hoar's political writing which has been preserved, and as a vigorous statement of the position then held by the anti-slavery Whigs.

TO THE PEOPLE OF MASSACHUSETTS

The Whig National Convention have nominated General Taylor for President of the United States. In so doing they have exceeded their just authority, and have proposed a candidate whom no Northern Whig is bound to support.

HE IS NOT A WHIG, when tried by the standard of our party organization. He has never voted for a Whig candidate, has declared that the party must not look to him as an exponent of its principles, that he would accept the nomination of the Democratic party, and that he would not submit his claims to the decision of the Whigs, acting through their regularly constituted convention.

HE IS NOT A WHIG, if judged by the opinions he entertains upon questions of public policy. Upon the great questions of currency and finance, of internal improvements, of protection to American industry, so far from agreeing with the Whigs, he has distinctly avowed that he has formed no opinion at all.

HE IS NOT A WHIG, if measured by the higher

standard of principle, to which the Whigs of Massachusetts and of the North have pledged themselves solemnly, deliberately, and often. He is not opposed to the extension of slavery over new territories, acquired, and to be acquired by the United States. He is a slave-holder, and has been selected because he could command votes which no Whig from the Free States could receive.

To make room for him, the trusted and faithful champions of our cause have all been set aside.

The Whigs of Massachusetts, by their legislature, and in their popular assemblies, have resolved that opposition to the extension of slavery is a fundamental article of their political faith. They have spoken with scorn and upbraiding of those Northern Democrats who would sacrifice the rights and the interests of the Free States upon the altar of party subserviency.

The Whigs of the legislature have recently declared to the country "that if success can attend the party only by the sacrifice of Whig principles, or some of them," they do not mean to be thus successful; that they are determined "to support a candidate who will not suffer us to be overbalanced by annexations of foreign territory, nor by the further extension of the institution of slavery, which is equally repugnant to the feelings, and incompatible with the political rights of the Free States"; and that they "believe it to

be the resolute purpose of the Whig people of Massachusetts to support these sentiments, and carry into effect the designs which they manifest."

Believing that the support of General Taylor's nomination is required by no obligation of party fidelity, and that to acquiesce in it would be the abandonment of principles which we hold most dear, treachery to the cause of freedom, and the utter prostration of the interests of free labor and the rights of free men: —

The undersigned, Whigs of Massachusetts, call upon their fellow-citizens throughout the Commonwealth, who are opposed to the nomination of CASS and TAYLOR, to meet in convention at Worcester, on Wednesday, the twenty-eighth day of June current, to take such steps as the occasion shall demand, in support of the PRINCIPLES to which they are pledged, and to coöperate with the other Free States in a convention for this purpose.

On June 28, 1848, pursuant to the call, the Free-Soil convention assembled at Worcester, and among its members were Samuel Hoar, who presided over it, Sumner, Wilson, Allen, Dana, Garrison, E. R. Hoar, and many other leading Massachusetts men. These names stand to us now for all that was best in that stirring time, but some of their contemporaries were not equally im-

pressed, regarding these "Mugwumps" with modified enthusiasm. The Boston "Courier" found "their speculations too transcendental for this dusty and drab-colored world." The Boston "Herald," less politely and with not entirely consistent vituperation, characterized them as the "fag end of a miserable fanatical faction," as "political pharisees," "knaves as rotten and hollow at heart as they are noisy and impudent in profession," "canting charlatans," "vagabondizing imbeciles," "drivelling and impertinent knaves," and later said of their meeting in August at Faneuil Hall: "Satan never congregated such a host in Pandemonium"; while the conservative "Advertiser" called the convention "Nothing but an Abolition meeting, drawing to itself malcontents of all classes."

"For so persecuted they the prophets which were before you."

Rockwood Hoar took a leading part in this convention; he was one of a committee to prepare an address and resolutions, one of the committee to nominate a state central committee, and one of the prominent speakers. No full publication of his speech was made, but it was variously described as "impressively eloquent" by the Worcester "Palladium," as "a speech of great force and power" by the "Whig," and in "Warrington's" first letter to the Springfield "Republican" as "a first-rate speech."

The Committee on Resolutions had difficulty in framing a statement in regard to Mr. Webster, whom the advanced Free-Soilers distrusted, and it finally took this form : —

"That Massachusetts is now looking to Daniel Webster to declare to the Senate and to uphold before the country the policy of the free states ; that she is relieved to know that he has not advised the support of General Taylor, and that she invokes him at this crisis to turn a deaf ear to 'opportunists' and 'quietists,' and to speak and act as his heart and great mind shall lead him."

On July 7, a ratification meeting was held in Faneuil Hall, at which Rockwood Hoar made a speech which is thus described in the "Liberator" of July 14 : —

"E. R. Hoar (son of the venerable man who was so summarily ejected from South Carolina, though the accredited agent of this Commonwealth in a matter vitally affecting its sovereignty and the liberty of its citizens) made a speech at some length, chiefly to prove that he and those who were acting with him were true to the Whig platform on the subject of slavery ; that they presented to the country no new issue, but were endeavoring to redeem old Whig pledges by a consistent course of action; that consequently they were neither factious nor sectional in their spirit or object; and declared that the Whig party had falsified its professions and promises and selected a man for

the presidency who had repeatedly declared that he would not run as the candidate of any party.

"So far as the Whigs of the North were concerned, it was very easy to prove that they have violated the most solemn pledges respecting the extension of slavery; but not so as regards the Whigs of the South who had given no such pledges. Mr. Hoar spoke in measured terms and in a professional style, as though he were simply making an ordinary plea at the bar, but occasionally he gave utterance to sentiments that were warmly responded to, especially if they related to the non-extension of slavery."

On the same day he issued an address, signed by himself and six others, advocating the reëlection of Dr. Palfrey to Congress, in which, after a few remarks faintly praising his opponent and eulogizing Dr. Palfrey in comparison, the signers proceeded, in part, as follows: —

When the Whig National convention nominated General Taylor, Mr. Palfrey could not, consistently with his principles and former professions, consent to acquiesce in the support of that nomination. No reasonable man could have expected that he would do so; and he expressed himself favorably to the political action of those who were determined to make opposition to the extension of Slavery not only the paramount principle in their party creed, but an indispensable re-

quisite in their candidates for office. He was assured on all sides that his known discontent with the nomination of General Taylor would not prevent his receiving again the support of the party by whom he had been elected; that if he would only be silent, refrain from taking any part in the presidential contest, and keep his opinions to himself, he might be assured of the nomination of the Whigs as well as that of the Free-Soil Party and thus secure a triumphant reëlection. Such inducements, however, could not determine his conduct. He would not consent to stifle his honest convictions, or to conceal or suppress opinions which he sincerely entertained for the sake of any object of political ambition. There had been no change in his political views; but he differed with many of his respected friends in regard to the course which honor, principle and conscience required; and he fearlessly followed the path which to his own best judgment seemed to be straightforward and true.

And now, Freemen of the Fourth District, why should he not be reëlected to the situation which he so honorably fills? Is there any end to be gained, except the gratification of an excited and vindictive party spirit, by setting him aside? What right, what interest of yourselves will not be safe in his hands? . . . You have sent him to Washington as the standard-bearer of the principles of Liberty and the rights of the North. And firmly,

steadily, heroically he has executed that sacred trust. He has never hesitated to stand up for the interest and honor of Massachusetts, or to make his voice heard on the side of freedom and of man. And now shall he be struck down at home? Did the South ever desert one who was thus faithful to her cause? And has the North less honor for her champions? What feelings do you think it would excite in the minds of John C. Calhoun and Senator Foote to learn that the man who has done what Palfrey has done could fail of a reëlection in Massachusetts? Would they not laugh to scorn your professions of devotion to freedom?

Massachusetts has lately lost a man whom she sent to the national councils, not as a partisan, but as a statesman and patriot. By a fortune which seems too appropriate to be called accident, the seat on the floor of Congress so long held by the venerated Adams has fallen to the lot of Palfrey. Is it not well that Massachusetts should still have a representative who shall place questions involving human liberty high above all others in his regard? And from what district should he rather be sent than from that which contains within its borders the earliest and most consecrated battlefields of Freedom? You can easily find representatives who will draw their salary and attend punctually in their places; who will do whatever work their party imposes, and vote regularly for such men and such measures as the

caucus shall have designated. But when her people shall have shown that they estimate party fidelity above devotion to principle, to truth and to duty, the race of fearless, true and independent men, of such men as John G. Palfrey, will disappear from her public councils.

E. Rockwood Hoar
John C. Park
John H. Shaw
Charles Mason
George Farrar
Sullivan Fay
Estes Howe

Hoar spoke at Lowell on July 3, and at Groton on July 17, writing the next day to Charles R. Train: "I made a pretty little speech to the Groton folks last night. Stuck a pin there."

On July 11, he thus described the situation in a letter to Dr. Palfrey: —

"I should have long since taken an opportunity to express my thanks for 'documents' received from you, and for various obligations, which I feel in common with many of your constituents, for doings of yours of a more public nature, but for a constant pressure upon my time, which has left hardly space for breathing, much less for writing. Allow me to do it now. You see and hear that we are doing something to second your efforts — with how much success the future will show. I do believe the heart of the people is sound and true —

but we have against us wealth, influence, the array of great political names, and the whole power of the press. Against these we have a cause that will almost make its own way, and here and there a newspaper and a determined man. The harvest is plenteous, but the laborers are few. Still, I think it is already settled, that Taylor cannot receive the popular vote of Massachusetts — Where we do make an impression, it goes deep. It is not a mere question of success for the time, though of that I am more and more hopeful — but an adhesion to principle that must ultimately triumph. . . .

"We are to have a convention, to choose delegates to Buffalo, at Concord on the first day of August. We wish to have you meet and address your constituents at some time soon after your return. That would be a very favorable time and place, if you can get away from Congress so soon, and the announcement of your intended presence would be an additional attraction of great power. Do you think it would be possible for you to come?"

On August 1, he called to order the convention at Concord to which this letter referred, was made chairman of the district committee and chairman of the committee on resolutions. He threw himself into the campaign in support of the Free-Soil movement with great vigor, speaking at Northampton on July 26, at Charlestown on September 5, and in other places.

He was especially active in behalf of Dr. Palfrey as a candidate for Congress, and the following letter to Charles R. Train on November 10, 1848, shows his strong feeling on the subject.

MY DEAR FELLOW, — I meant to have seen you again before you left Cambridge, to say one serious word about politics.

I do not think the Whig convention was under any obligation to nominate Palfrey; but I think the question whether *that convention should nominate* him, and whether the *Whig voters* of the District should *support him*, depend upon very different considerations, and should receive a very different decision. But in particular, I think that principle, and honor, and manliness, require of you personally that you should not only vote for him, which I know you intend to do, but that you should give him your support. You can carry the town of Framingham by your influence, if you choose to exert it. I told Palfrey last August what you and Nelson and I had said about it. I know you can have no doubt who our representative ought to be, and do for Heaven's sake say so. For your own sake, don't put yourself in Nelson's position. I think the disgrace to Massachusetts in the eyes of the country, should Palfrey be defeated, would be dreadful.

I told Palfrey there were three men in the district whom he might rely on through thick and

thin. I had their own word for it — and I hope that two of them, at least, may redeem the pledge. One will, by Heaven!

Yours,

E. Rockwood Hoar.

On November 6, he spoke at Woburn, and some idea of his speech and of the interest which the voters then took in public speaking may be gathered from the entry made in his diary by one of the audience : —

"Mr. E. R. Hoar has just concluded one of the most sound and convincing addresses to the citizens of this town to which they ever listened. It was full of dignity, candor and truth. The withering rebuke he administered to the maligners of J. G. Palfrey was enough to bring the blush of shame to the cheek of the most degraded political harlot. The appeal to the electors of the 4th district was most patriotic and stirring. For *three hours* the audience listened, uttering at frequent intervals their decided approbation of the sentiments and views of the speaker. It was a glorious close of the speaking for the campaign. Let it be done in sincerity, honor and conscience, and may the Lord prosper the right!"

Just before the election there was a rally at Concord which the Judge thus described in a letter : —

"The Court House was filled to its utmost ca-

pacity, some hundred and fifty ladies being among the audience. I presided, and introduced Mr. Shaw. He spoke for about an hour; then we had a song, and then I spoke for about twenty minutes by way of introducing Palfrey. You know it is a favourite subject, and whether I made a good speech or not I cannot tell, but I gave them my full mind about it, and I thought the people would have taken the roof off the Court House. Mr. Palfrey spoke very well for near two hours, and we broke up near 11 o'clock with cheers innumerable."

It is interesting to know that in Concord old men joined in the revolt for principle; for Squire Hoar and Squire Brooks were both speaking in other towns on the night of this meeting.

The Free-Soil party cast only about 37,000 votes in the whole country at the election in November, and Dr. Palfrey failed of election. To him on the night of the election Hoar wrote as follows: —

CONCORD, *Nov.* 13, 1848.

MY DEAR SIR,—I wrote to you some time ago, and told you that you had some political friends who would stand by you to the end. Some of them have proved faithless, but my part of the pledge has been redeemed — so far — to the extent of my power. I made five speeches on the question of your election during the last week, and we gave you to-day in Concord a larger vote than has been given this year by any party for any candidate for any office.

The vote stood, Palfrey, 157; Robinson, 143; Thompson, 48; Van Buren had 140, and Phillips, 135.

We have heard from no other town, but if our vote is any criterion, we must have reversed the plurality in the district between Taylor and Van Buren.

Our Taylor friends talked of electing Mr. Thompson on first trial, but I believe no man can be elected in the district while you live and will consent to run. Some who voted for Thompson to-day say that they will vote for you next time. We had one man to vote for you who has not voted for ten years, and came twenty miles on purpose to do it. No expresses are run for this election, and I thought you might like to hear from your friends here. If there is another trial, we will do our utmost to give you a majority in Concord and will carry the district at any rate.

We are hoping for good news to-morrow.

Very truly your friend,

E. Rockwood Hoar.

A new election was ordered, and in anticipation Mr. Hoar issued the following letter, which, though printed, was marked "Private": —

November 22, 1848.

Dear Sir, — The result of the recent trial to elect a Representative to Congress from the 4th district has not been officially ascertained; but

enough is known to make it certain that there has been no choice by the people, and to render it probable that Mr. Thompson has received a small plurality of votes. A new election will doubtless be ordered by the Governor in the course of a few weeks.

The Free-Soil District Committee wish to impress upon your attention the importance of a resolute, concerted, and vigorous effort to elect John G. Palfrey on the next trial. There is every reason to believe that such an effort would be attended with complete success.

I. The whole vote cast will probably be much smaller than before. This is usually the case at a *special*, compared with a *general* election. Many of the Whigs, who voted the whole of the regular ticket, will not turn out when the only object is to defeat Mr. Palfrey. The only purpose which could be intended in substituting Mr. Thompson for Mr. Palfrey is the gratification of an excited and vindictive party spirit, and the great mass of the party would not be governed by such a motive. They know that Mr. Palfrey has been a faithful and able representative, and that he is an honest and highminded man; and they will be satisfied with the demonstration already made, and not attempt to prolong a useless contest. The Democratic party, so far as it supported General Cass and Mr. Robinson, will not probably rally again in any considerable force. Without hope of success

for their own candidate, they will make little exertion.

II. At the late trial Mr. Palfrey gained about twelve hundred votes compared with the presidential election, and almost everywhere ran ahead of his ticket. This, it must be remembered, was when he was voted for at the same time, and in many towns on *the same ticket*, with the State officers. It shows the hold he has upon the respect and affections of the people; and it may be reasonably inferred, that, running alone, he will make a much greater comparative gain.

III. There may reasonably be expected a large accession to our strength from the Democratic party. They are indignant at the defection of their Southern allies in the late contest — they know that Mr. Palfrey has been an independent, fearless, uncompromising asserter of the rights of the North, and of the principles of freedom and humanity. They cannot expect to choose a candidate of their own, and numbers will join us from a regard to the personal qualities of the candidate, and to the character and honor of the district.

With these views and hopes, we ask you to see that the organization of the Free-Soil party be continued, and kept in an as efficient state as possible. Try to have every voter brought to the polls who voted for Mr. Palfrey at the last trial. The same number of votes cast for him again, would very likely ensure his election. But with the same

votes again, we shall doubtless have hundreds which were thrown against us before, and which will now go with us. Endeavor to have the Town Committees active and vigilant. Bring out every voter who will support Palfrey, of whatever political views. Do nothing to excite or arouse the feelings of the other parties, many of whom would see Mr. Palfrey elected with satisfaction, or at least without objection, if they are not made angry.

We respectfully ask your *personal coöperation* in promoting this object.

In behalf of the Committee,

ESTES HOWE, *Secretary.*
E. ROCKWOOD HOAR, *Chairman.*

Of this and the circumstances under which it was prepared, he wrote to Dr. Palfrey as follows on December 19, 1848 : —

I should have been glad to acknowledge sooner the receipt of your letters, for which I felt greatly obliged, but I have been sick ever since I saw you at Cambridge, and for the last two weeks confined to my bed with a bilious fever. In the midst of it, however, I managed to dictate "an address to the voters of the 4th District" which I have sent to Dr. Howe, and suppose will be published. If it is not so good as it ought to be, allowance must be made for the peculiar circumstances of its production. I used your "brief" to some extent, tak-

ing considerable liberties with it, as you will see when you get the address. . . . I do not expect to be able to go out much, or attend to business during this month (yesterday being the first day that I have left my bed), but will try to see that all proper efforts are made to bring out a full vote.

It must have been gratifying to you, and did me as much good as any medicine, to find that you had the plurality by the official return of the votes.

Your suggestion about Mr. Winthrop's persistence in his course relative to the appointment of committees, came too late for me to use. I had sent off the address, and I do not know that it adds much to the argument.

In the hope that we may have some good news to send you for the new year, and not having strength to write more now, I am

Very truly your friend,

E. Rockwood Hoar.

The new election resulted in another failure, but the young Free-Soiler was no whit discouraged, as the following letter shows : —

Boston, *January* 5, 1849.

I feel mortified that, while your gain at the late election is greater than in any other district, you should still fall a few votes short of an election.

It makes me regret extremely that my illness should have prevented my doing all that ought to have been done in my capacity as Chairman of the District Committee. I am not conscious that I omitted anything within my power, but a little more effort would have accomplished the object.

As it is, if the Governor orders another election in February, we will give you 500 or 1000 majority — if it is put off till March, the contest may be prolonged — but we shall make as strong an effort as we can in either event. Mr. Thompson may as well decline sooner as later. It is impossible for him to be chosen while you live and will run.

I gave some personal attention to Concord, Lincoln, and Acton; for the other towns I had to rely upon others wholly; but there is hardly a town but has done pretty well. . . .

Our friends mean to spur up the Legislature to as good resolutions as they can, taking New York for a pattern. The talk of a plurality law, which was quite common for about a fortnight after the November election, has all passed by.

The result of repeated trials was final defeat, and Mr. Hoar's part in the contest may be gathered from the two following letters: —

BOSTON, *June* 29, 1849.

DEAR SIR, — I write in great haste, being much pressed for time, but unwilling to defer longer an

answer to your letter, to say in brief, that I do not see how you can retire from the contest in the 4th District, consistently with the safety of the Free-Soil Party there, or without injury to your own reputation. It would be a great shock to your friends, and would occasion a gratification to our common opponents which you ought not to furnish. Your withdrawal would be considered a proof of cowardice, and a yielding and sinking under the attacks made upon you.

To your statement that you must engage in some business which will afford an income, I can only say that we have no claims superior to those of your family, of course, but that if you never went to Washington again, and engaged in pursuits, which would make going there out of the question, you ought still, in my judgment, to allow yourself to stand as a candidate until you are *chosen*. Then you can act with freedom. I have seen nothing to shake my conviction that you must be ultimately chosen, and probably at the next trial.

Very truly yours,
E. Rockwood Hoar.

Concord, *May* 27, 1851.

My dear Sir, — I cannot forbear expressing to you my grief and disappointment at the disastrous result of our election yesterday. No political event has ever given me such unmingled pain

and sorrow. Out of Cambridge and Charlestown everything went well, and you have received more votes than were ever before given to any candidate in the district. There has been no faltering or wavering, or omission of any practicable and honorable exertions on the part of your supporters — and I cannot see that we have anything to reproach ourselves with. The simple truth is, that the number of the Boston gentlemen who sleep in the district, and the malignity of the ancient Democracy, have been too much for us.

There would have been no gratification of a public nature so dear to my heart, as to have been able to-day to congratulate your friends and the Commonwealth upon your election. It is a private consolation to feel that in defeat you retain the affectionate sympathy, the thorough confidence, and the admiration of your political associates, and that you have commanded the respect, if you could not win the support of your opponents.

I am, Sir, with grateful and constant regard, your friend,

E. R. Hoar.

During the year 1848 Mrs. Hoar was obliged to leave Concord on account of her health and to reside for some time in a sanitarium at Flatbush near New York. Her husband's letters to her during this period throw some light upon the life of the active young lawyer and politician. His first

letter after leaving her was written on October 8, and from it come the following extracts : —

"On Monday I went to Lowell in a driving storm, but encased in Mrs. Cornell's Rockaway wagon, which has a glass to close it wholly in front, and leather at the sides, making it very comfortable. . . . I returned home the same evening, and on Tuesday went to Boston and stayed till the last train in the evening. Wednesday was cattle-show. Dr. Palfrey did not come, and Mr. Gray brought no one with him. We had a nice day, however, and a good dinner, with the usual amount of wit and good toasts. On Thursday the Free-Soil Convention — a fine dinner, four gentlemen as guests — Dr. Palfrey nominated as our candidate for Congress. The Taylor men on Tuesday nominated Benjamin Thompson in the place of Palfrey. . . . Thursday night General Wilson spent with us, and it was made hideous by the yells of rowdies preparing for the next day, when we had a muster and the usual quantity of rum and noise. I spent it at Boston, and in the evening went to Harvard to deliver a Free-soil speech, — and had a grand houseful. Yesterday morning I went down to Boston from Harvard, and up to Lowell, and home by the evening train, and stayed at the office till about midnight. To-day (my first Sunday for three weeks), I went to Church. . . . Sammy, having no Mama to impose upon, has tried his hand on me, with more success, I am

ashamed to own, than I should have expected. . . . We are to break up to-morrow. . . . I go in the special train to Boston, to stay most of the week at the Miller trial."

On October 29, 1848, he wrote: —

"In the words of Dr. Watts, 'Another six days' work is done,' and my good day comes after it; with some novelty this time. I did not get through my work at Newton, where I have been the last two days, until too late to get home even by the special train, and had to hire a man to bring me home at half past nine in the evening. I found our house locked up, the key at Father's. . . . I found our hearth cold, and all sign of habitation gone, except the entry lamp on the post, which was lighted and left for me, and the cat in the cellar, and the kitten in the shed. I slept there, however, and intend doing so again to-night, but have breakfasted and dined to-day at Father's. I locked the front door on going to bed, and the first sound I heard afterward was a knocking at my chamber door and Hannah's voice saying, 'Your father sent me up to tell you that breakfast was ready.' — 'How did you get in?' responded I. 'At the back window,' replied Hannah. 'Then you did not fasten up the house when you left it, as I told you to,' was the answer. . . . John Garrison is coming to-morrow if it does not rain, to set out some trees and work in the garden for me, but the Supreme Court begins, and my perpetual absence with it.

The special train will end this week — and then my Boston life commences."

Again on November 5 : —

"My own health (which you say I have not spoken of) has been a pretty fair average for me, considering that I have worked very hard. I gave up politics for a while, not making a single speech after the 6th of October (when I went to Harvard) during that month. Last Wednesday evening we had the finest Free-soil meeting of the season at the Court House, to hear and welcome Mr. Palfrey. . . . I went last night to Acton to make a speech, and had a big house full, from all round the neighborhood. A dozen or more went up from Concord. I am going to-morrow night to Woburn and on Thursday night to Cambridge, — to make speeches, — which will end it, I hope. . . . I am working like a beaver."

On November 12, he wrote : —

"At Woburn I gave some three or four hundred Free-Soilers a speech three mortal hours long, — ending at near eleven o'clock, — which they stood like heroes, ladies and all; — and the next morning I had to set off by daylight, in order to take the morning train to Concord, so as to be in season to vote, — and put my letter into the Concord post-office, which would enable you to get it on Thursday. This week has been full of politics, save that the Supreme Court has been in session, since Wednesday, and I have been busy there day-times.

I have made five speeches, chiefly on Mr. Palfrey — namely, at Woburn on Monday, at Cambridge on Thursday, at Charlestown on Friday, and at Lincoln last evening, ending off with one in Concord between 9 and 10 o'clock in the evening. I am entirely worn out and glad the contest is over. To-morrow we vote, and I hope good things for Palfrey, though we cannot hope to elect him on the first trial, as Taylor had near 1300 more votes than Van Buren in this Congressional District, besides the Democratic throwing some 4500 for Cass. Concord gave Cass 147, Van Buren 140, Taylor 62, scattering 1. We mean to improve that to-morrow."

From this last letter another extract shows the real tenderness of the Judge : —

"My dear wife, you do not need any assurance of my love, but I think of you every time I lie down, and every time I rise up, and whenever I see our children; and our home is dreary without you. I shall count all the time you are gone as so much taken from the happiness of my life. I do not miss you so much in all the whirl we have been in on week days, but my Sundays have lost almost all their comfort and happiness."

A slight flavor of domestic relations may be gathered from this passage taken from a letter of February 25, 1849 : —

"Sammy had a prodigious frolic with his Grandfather, 'Mr. Papa,' at dark, and was very much

excited and elated; but when bed-time came had become so much tired that he felt contrary, and on being asked by Grandpapa Brooks to kiss him and say good-night, said, 'No, Ba' shall kiss Aunty,' and on my telling him, 'Sammy, say good-night, Grandpapa,' turned his back upon me, and remarked with some emphasis, '*Ba' will tink of it*,' which caused an acceleration of his thoughts on my part, which brought out the 'good-night, Grandpapa' with a jerk. But he went to bed at last reconciled and amiable."

CHAPTER III

HIS FIRST SERVICE ON THE BENCH

In July, 1849, Governor Briggs appointed Mr. Hoar a judge of the Court of Common Pleas, and he took his seat on the bench at Boston on September 11. If it be asked why a man so successful at the bar and so deeply interested in the politics of an exciting period was willing to accept thus early in life a judicial position which necessarily withdrew him from activities that seemed so congenial, the answer probably is that his health made a quieter life attractive. Judge Hoar was never robust, his digestion was never strong, nor was he ever fond of regular exercise. The confinement and excitement of continual trials wore upon his nerves, and he found it difficult to banish his cases from his mind, so that his sleep was disturbed and his general health affected. These considerations doubtless influenced his decision.

He sat upon the bench for the next six years, and brought to the discharge of his judicial duties the sound common sense, the clear intelligence, the incisive wit, and the power of statement for which he was always distinguished.

His mind worked so much more quickly than the minds of most men that he saw weak places

in their armor of which they were unconscious, and at times he could not resist the temptation to point them out with unerring accuracy, not always to the satisfaction of the victim. Many a member of the bar winced under his shafts, and showed his resentment outside the court-room, but all recognized in him a strong, upright and fearless judge, at whose hands justice would not suffer.

As the judge of a trial court writes no opinions which are reported, his acts and sayings are preserved only by oral tradition which is apt to die with his contemporaries, and but few reminiscences of Judge Hoar's years on the Common Pleas Bench have been preserved. Some anecdotes are still remembered, but whether they narrate incidents of his service in this court, or of his longer service on the Supreme Bench, is not always clear.

Two years after his appointment the Fugitive-Slave law was passed by Congress. He shared the shame and indignation felt by men of honor and humanity in the North. It was a touchstone, and his own wisdom and virtue were soon put to proof.

"It was a time," said Mr. Albert E. Pillsbury, in his tribute to Judge Hoar after his death, "when the slave-power was dictating action to the executive, law to the legislator, and judgment to the bench. But the ermine could not smother the fire in him; and it very soon became evident that

while he observed all the obligations of judicial decorum, there was no power adequate to impose any shackles on his hands or seal upon his lips. One of the most striking and most creditable incidents of his career occurred at the time when Burns was taken from Massachusetts back to slavery, when Judge Hoar charged the Grand Jury of Suffolk to strictly inquire whether the militia of Massachusetts had been unwarrantably used in aiding in the capture and the return of the fugitive slave, and, if so, to indict and bring to the bar of justice every man concerned, from the highest official, civil or military, down to the last private."

So remote is that statute, that it is well to recall its iniquitous provisions. It authorized the delivery of a slave to his master by a commissioner of the United States on the issuing of a warrant in the state from which the slave was alleged to have fled. The alleged fugitive was not allowed a jury trial; the claimant was not bound to prove that he was a runaway — a simple affidavit was enough. Any harboring or aid given a fugitive, or refusal to help in his seizure, was made a crime with heavy penalties; while, as if to insult the magistrates before whom the alleged fugitives were brought, they were allowed a larger fee if they delivered them to the claimants than if they discharged them.

In an ineffectual attempt to rescue Anthony Burns, one of these fugitives, from the United

States Court House in Boston, one of the Marshal's posse, Batchelder by name, was killed. Judge Hoar held the next term of criminal court in Suffolk. His charge to the Grand Jury was said to have been "one of the best statements of the law of riot, and of the duty both of citizens and of judicial tribunals, in regard to the laws which they believed to be unjust or wicked, to be found in all jurisprudence."

This charge, made on July 3, 1854, and later printed, deserves preservation. After defining a riot and the responsibility of those taking part in it, he proceeded : —

"But it may be made to appear to you, that within a few weeks the door of this Court House was forcibly broken open, in the night-time, by a large number of persons, and that in the course of the transaction in which they were engaged, a man lost his life; and that the purpose of those engaged in that assembly was to rescue from the custody of the Marshal of the United States, a person placed in his custody under a precept issued by an officer of the United States. If the person whom he held were lawfully in his custody, an attempt by force and violence to rescue him, by three or more persons, carried wholly or partially into execution, would undoubtedly make them rioters ; and if, in the course of their riotous acts, any person was by one of them, acting in pursuance of their unlawful design, killed, each

of the persons who were thus engaged would be legally responsible for the death of that man, although it might not have been in their individual contemplation to take his life."

He then laid down the law as follows: —

"It is my duty to say to you that the law under which that prisoner was detained, is a law binding upon the citizens of this Commonwealth. It has been enacted by the National Legislature, approved by the President of the United States, and held to be a constitutional enactment by that tribunal whose duty it is to determine the validity of all laws under which the inhabitants of this Commonwealth are placed; and whatever opinions we may individually entertain as to the correctness of that decision, no citizen of the Commonwealth has a legal right to disregard the decision of the Supreme Court. It is binding upon all. It is the duty of every inferior tribunal to regard what they have decided henceforth as law, and it is the duty of all those concerned in the administration of justice, in any and every department, so to regard it. Gentlemen, any other rule, any other conclusion, could lead to nothing but anarchy.

"It may be that at some time hereafter, the act of Congress known as the Fugitive-Slave law, will be held not to be constitutional. In the meantime, however, what is the duty of those of us who have to do with it in the administration

of public justice? I might here, gentlemen, if it were proper for me to do so, and I were delivering an opinion in which that question arose, give you my private view upon this matter. I might say to you that the reasoning on which the law has been held to be constitutional, so far as our Supreme Court is concerned, as I understand the decision, is placed on the ground of authority, and not of right. I might say that, in my view, regarding it in the best light I have upon the matter, that statute seems to me to evince a more deliberate and settled disregard of all the principles of constitutional liberty than any other enactment which has ever come under my notice. You, gentlemen, might each of you entertain similar private opinions upon this subject. But of what avail is it, and what right have you or I to act upon these opinions?

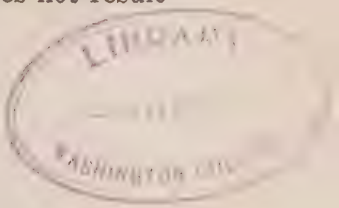
"It could never have been the intention of the framers of our Government, it is not consistent with the rules and principles of our Government, that a rule of law should be held one way in New York, another in Philadelphia, and another in Boston; that it should be dependent upon the individual opinion of a judge or juror called upon to administer it.

"The only safe rule of our duty is, that when the tribunal provided by the Constitution and laws has decided upon the constitutionality of an enactment, all citizens are in practice bound to

regard it as a question settled. With their political duties, with their feelings, we have nothing, *here*, to do. Within these walls nothing of party passion, of private interest or feeling should come.

"It has been said sometimes, and in some places, that there are laws which it is the duty of citizens to disobey or resist. I have no doubt, gentlemen, and I suppose none of you have any doubt, that a law may be enacted by a republican government, as well as an order passed by a despot, which may be in itself wicked; and if a statute is passed which any citizen, examining his duty by the best light which God has given him, and acting conscientiously and uprightly, believes to be wicked, and which, acting under the law of God, he thinks he ought to disobey, unquestionably he ought to disobey that statute, because he ought to 'obey God rather than man.' I suppose that any man who would seriously deny that there is anything higher than human law must ultimately deny even the existence of the Most High.

"But, gentlemen, it is not a question of private conscience, which determines our duties in the premises. A man whose private conscience leads him to disobey a law recognized by the community must take the consequences of that disobedience. It is a matter solely between him and his Maker. He should take good care that he is not mistaken, that his private opinion does not result



from passion or prejudice, but, if he believes it to be his duty to disobey, he must be prepared to abide by the result; and the laws as they are enacted and settled by the constituted authorities to be constitutional and valid, must be enforced, although it may be to his grievous harm. It will not do for the public authorities to recognize his private opinion as a justification of his acts."

He then dealt with "the relation of the military power to the civil authority of the Commonwealth," and from this part of the charge a few paragraphs may be quoted.

"But a few weeks have gone by since the citizens of Boston saw in their midst a large body of soldiers assembled, the volunteer militia of Massachusetts, engaged, as it has been asserted, in preserving the peace of the city and maintaining the supremacy of the laws, — an honorable and responsible duty, whenever it is lawfully assumed, and faithfully discharged.

"From what necessity or cause these soldiers were assembled; under what authority they acted; whether their employment and their conduct were in conformity with the Constitution and laws of the Commonwealth, — and to whom the responsibility of their acts attaches, — are questions which have been publicly discussed, and which it is not improbable that you may be obliged to investigate. . . .

"With the holiday soldier, the bright array, the

martial music, and waving plumes, which most of us regard with complacency, and which afford such delight to the juvenile spectators, we are all familiar; with the soldier as the terrible instrument of the law, the last resort of the civil government for the absolute enforcement of its authority, we are happily unfamiliar.

"It is sometimes said that our Government rests, at last, upon military force. It rests upon no such thing. It finds its chief strength in the respect of an intelligent and virtuous people for the laws which they themselves have made; and its ultimate reliance is upon the power of the people to execute their own will. The military force which a free people allow to exist among them, it regards but as a convenient instrument.

"To understand clearly the points involved in this inquiry, it will be well to recur a little to first principles.

"The object of a constitution of government is, in the preamble to the Constitution of Massachusetts, declared to be

"'That every man may, at all times, find his security in the laws.'

"To this end two things were of the first necessity: 1, The maintenance and enforcement of such wholesome laws as should be enacted; and 2, The protection of the liberty of the citizen from the encroachments and abuse of authority of those to whom power should be entrusted."

After stating the law fully he concluded as follows: —

"If our citizen soldiers, lawfully mustered in the public service, have been assaulted or injured, see to it that the aggressor, if he can be discovered, shall not go unpunished.

"If it shall be made to appear to you that any assault has been committed, or violence done, or forcible obstruction of lawful business occasioned, by any part of the military force, 'diligently enquire and true presentment make' concerning it. Ascertain under what order or by what authority it was done. Trace it to its source. Consider what is its justification. Extend the full protection of the law to everything which a liberal construction of the law can justify or excuse. But if you find the law has been violated, and that there has been an invasion of private rights, or an infringement of public liberty, do your duty as you have sworn to do it; and 'leave no man unpresented, for love, fear, favor, affection, or hope of reward.'

"It may be said that there was a great public exigency, an imminent danger; that riot and bloodshed were prevented; that there has been no considerable destruction of property, no serious personal injury inflicted, no sacrifice of life, and that it would be harsh and unwise to subject to criminal responsibility those who have acted with general good intention. Gentlemen, this is a very superficial view of the matter. All right-

minded men are opposed to lawless violence. The whole community cry out against it. But when law is disregarded by its own guardians and supporters, it is 'wounded in the house of its friends,' and all sentiments of reverence for law in the public mind are weakened.

"The old Latin maxim tells us to oppose beginnings — *Obsta principiis.* Occasions where the gravest consequences have not followed, and the strongest passions are not excited, are the best to establish principles and define duties.

"And if the facts which shall be laid before you require it, I have no doubt, gentlemen, that you will be ready to show to the people of the State that laws are not made for those only who crowd the gallery or fill the dock; that whenever the strong arm of power has been raised without justification, and any citizen has suffered in his person and property, the whole community feels the wound; and that the justice which is no respecter of persons will allow no military or civil title to give immunity to the transgressor."

It was Judge Hoar, during his service on this bench, who established the law of Massachusetts on the difficult questions how far a juror should yield to the opinion of his associates in case of a disagreement, and what a judge may properly say in order to induce agreement. His statement to the jury in *Commonwealth* vs. *Tuey*[1] was sustained

[1] 8 Cushing, 2–3.

by the Supreme Court and has been ever since a useful weapon in the hands of the bench, not only in Massachusetts but elsewhere. It was as follows:—

"The only mode provided by our Constitution and laws for deciding questions of fact in criminal cases, is by a verdict of the jury. In a large proportion of cases, and perhaps, strictly speaking, in all cases, absolute certainty cannot be attained or expected. Although the verdict to which a juror agrees must of course be his own verdict, the result of his own convictions, and not a mere acquiescence in the conclusion of his fellows, yet, in order to bring twelve minds to a unanimous result, you must examine the questions submitted to you with candor, and with a proper regard and deference to the opinions of each other. You should consider that the case must at some time be decided; that you are selected in the same manner, and from the same source, from which any future jury must be; and there is no reason to suppose that the case will ever be submitted to twelve men more intelligent, more impartial, or more competent to decide it, or that more or clearer evidence will be produced on the one side or the other. And with this view, it is your duty to decide the case, if you can conscientiously do so. In order to make a decision more practicable, the law imposes the burden of proof on one party or the other, in all cases. In the present case, the

burden of proof is upon the Commonwealth to establish every part of it, beyond a reasonable doubt; and if, in any part of it, you are left in doubt, the defendant is entitled to the benefit of the doubt, and must be acquitted. But, in conferring together, you ought to pay proper respect to each others' opinions and listen, with a disposition to be convinced, to each others' arguments. And on the one hand, if much the larger number of your panel are for a conviction, a dissenting juror should consider whether a doubt in his own mind is a reasonable one, which makes no impression upon the minds of so many men, equally honest, equally intelligent with himself, and who have heard the same evidence, with the same attention, with an equal desire to arrive at the truth, and under the sanction of the same oath. And, on the other hand, if a majority are for acquittal, the minority ought seriously to ask themselves, whether they may not reasonably, and ought not to doubt the correctness of a judgment, which is not concurred in by most of those with whom they are associated; and distrust the weight and sufficiency of that evidence which fails to carry conviction to the minds of their fellows."

One of his professional brothers said of him: —

"Judge Hoar took to the bench the qualities which marked him as an advocate, and, in addition, a keen judicial instinct. He was not an impatient judge, as some judges are impatient, but if a man had a

poor case he was fairly sure to find out Judge Hoar's opinion of it early in the trial. In charging a jury, he had the faculty of making the jury understand the matter in hand, and he never delivered a charge over the heads of the men in the box. The same hard common sense that he displayed at the bar he displayed in his decisions from the bench."

His methods on the bench may be illustrated by a few instances. Judge E. H. Bennett tells us that during one of his first terms, a rich merchant of New Bedford asked to be excused from service on a jury.

"For what reason?" asked the Judge. "Oh," replied the merchant, "I have a whaling vessel fitting out at New Bedford, another just arrived in Boston, and I have some pressing business in Philadelphia, all of which demand my personal attention." — "Very well," answered the Judge, "if you have so much property as that, you can well afford to give a few days' service to the Commonwealth. I cannot excuse you."

Of another drawn to serve on the Grand Jury, who sought to be excused because he was deaf, Judge Hoar inquired, "Are you wholly deaf? Can you hear nothing?" To which the juror replied, "I am deaf in one ear." Whereupon Judge Hoar said, "I must require you to serve; the Grand Jury is only expected to hear one side."

Judge Bennett tells us also that he was once

trying before him "an action for an attorney's bill, the only defence to which was that the argument of the plaintiff, though successful, had not occupied a long time in court, and that the charge was excessive. When giving the case to the jury Judge Hoar said: —

"Gentlemen, it is for you to consider whether the length of time during which a person is actually engaged in some skilled labor is a satisfactory test of the value of his services. Suppose a man should injure his leg and some eminent surgeon should successfully amputate it in two minutes. What would you think of a refusal to pay simply because of the time the operation required, the man saying, 'Why, I could have got another fellow in our town to have hacked away at my leg for two hours for half the money.'"

Such a charge was illuminating.

Some passages from his letters to his wife show how he regarded his life on the bench. Thus on January 1, 1852, from Lawrence he writes: —

"I am leading almost an idle life up here — not unreasonably laborious at any rate. Some of the lawyers are sick, some have pressing engagements elsewhere, and from various causes it has been almost impossible to get anything ready for trial. On Monday I did not try a case, and adjourned for the day before 3 o'clock. On Tuesday I had an hour from 12 to 1, and this forenoon

we were out of employment by half past 11; so that, with quiet evenings and long nights' sleep, I am having quite a rest after the fatigues of the autumn and early winter, and shall start upon 1852 in unusually robust condition. There is nothing, however, to indicate getting through before the 15th to the 18th of January, and so, not expecting to see you until Saturday, I thought I would send a letter to wish you all 'a happy new year.'"

On March 15, 1852, writing from Springfield, he speaks of certain alleviations: —

"I went last Thursday night to a party at Mr. Benjamin Day's — quite a pretty party, but at which I met with this startling and melancholy experience. A lady with whom I was conversing, a widow, 'fair, fat, and forty,' whom I had met a year ago in Worcester, where she had been in the habit of visiting, had relatives, and knew people very well, and where she had seen and known Frisbie, asked me with perfect gravity, looking in my face steadily and composedly all the while, 'whether I had not a *son* who was a lawyer in Worcester!' Talk of birthdays after that! I intend when I come home to get a bat and ball and a hoop, to live on milk and lettuce exclusively, go to bed at 'early candle-light,' and keep a Newfoundland puppy. If Carry grows much taller, I shall tell people that she is a daughter of my wife by her first husband. . . . I heard some good Orthodox preaching all day on Sunday, with some can-

vas-back ducks interposed. In the morning the preacher gave us the points of resemblance between a righteous man and a palm tree, with great minuteness. Among other items he observed that a palm tree bore from 300 to 400 pounds of dates every year, from which we concluded that by analogy every righteous man would be entitled to an income corresponding — say at least £300. In the afternoon the preacher indulged in some remarks about sinners, not at all complimentary to that large and influential class in the community. This morning we rode back to Springfield with a horse, the cars not running in season for the court, and though the distance was but nine miles, we were just two hours and a half in getting over it through the deep mud. . . . At the lecture the other night, the lecturer spoke of a certain lady in Europe, and among other descriptive epithets spoke of her as 'a stumpy woman.' 'What is a stumpy woman?' said a lady who sat next to me. 'One that is fond of oratory, I presume,' was my reply."

On Friday, August 13, 1852, he writes to Mrs. Hoar: —

"I have fallen upon a long-winded, cool, and easy generation of lawyers, who in military phrase 'sit down before' each witness, and seem to intend to reduce him to terms by starvation, if other means fail. A witness in a case to-day was asked how a certain examination was conducted at a

previous trial; 'well,' said he, 'pretty much as it has been here this time : *they asked a great many very foolish questions.*'"

On May 2, 1854, at Dedham, he presents another phase, thus : —

"We are at work on the criminal business, all civil cases being postponed till next week, and there is some prospect that the criminal cases may be finished by Thursday, so that I shall have a day or two at the end of the week. It is not yet certain, but it is probable."

On March 4, 1855, he writes from Lenox a characteristic letter : —

"You perhaps are aware that I am not in our parlor — that there are no Hunt russets on the table before me, that no grandfathers have come to enjoy the company of the children, and no children have run to meet them, that no wife sits composed and gracious in this rocking-chair (in fact I am sitting in it myself) ; no coming footstep in the least resembles Uncle George's or Dr. Bartlett's ; no Clara seduces me from the strait and narrow ways of emptiness into the broad road to dyspepsia and bile, with cups of tea and ginger snaps ; and this morning another Bible had to be substituted for the one so tenderly associated in Charley's mind with fish-balls and milk-toast. For the first time since the 1st of August last I have spent a Sunday away from you and the little ones. And I have been most thoroughly and completely

alone. All the lawyers went off yesterday afternoon — and left me in this great boarding-house, the only boarder. My solitary table was set for breakfast at 8 o'clock, and for dinner and tea together at 4. . . . I have had a comfortable time, and have been pretty well since Thursday. Yesterday morning, Mr. Charles Sedgwick called with a horse and sleigh just after breakfast, and asked me 'to take a little turn before court.' I went with him, and we rode off some miles, going over drifts from four to six feet high, now and then having to throw ourselves as far as we could on to one side of the sleigh to avoid upsetting, and going a considerable distance on one runner. This went on till we found it near the time for court, and as we came to the road which would take us most directly back, and which he had intended to take, we found that it was not broken out — not even a single track visible, and that the travel went round by a circuit of nearly two miles farther. We must either be late or try to go through. So, as the snow did not look very bad at first, we tried it. We got along tolerably well for about a quarter of a mile, and then we came to some drifts, or rather a drifted place for fifty or sixty rods, about as steep as the bank in front of our house, and as Mr. Sedgwick said, 'about twenty feet deep.' I should not want to swear to over fifteen, however. Along the side of this we had to skirt — the crust on it sometimes hard enough

to bear the horse, sometimes as icy as a glacier — and sometimes wallowing. Of course riding was out of the question. We should have gone heels over head, horse, sleigh, and all, down to the bottom a dozen times. Mr. Sedgwick carried the horse and I carried the sleigh — and we luckily got through — having exercise, and experience, and fun enough to last a good while. Poor Mr. Sedgwick's distress at such entertainment in the place of the nice little ride he had intended was really comical; but it was all the better. I took tea and spent the evening at Mr. Sedgwick's last evening, with Miss Catherine and Judge Bishop and his wife. This morning I went to the Orthodox church, the only one in operation here, and had a very respectable sermon, and a genuine old-fashioned country choir — 14 men, from twenty-five to sixty years old, — six feet high on an average, — the front of the gallery being a low open railing, and they standing on a step raised behind it, so as to bring their whole height into view from their boots upward — singing to the utmost of their ability; ten young women, with what sounded exactly like a hand-organ, filling up the measure of their glory."

These letters give some idea of a judge's life in Massachusetts during the early fifties.

Though withdrawn from active participation in politics, Judge Hoar could not lose his interest in the questions of the day. To the coalition between

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the Free-Soilers and the Democrats which carried Massachusetts in 1850, resulting in the election of George S. Boutwell as governor and Charles Sumner as senator, Judge Hoar was opposed. He had an invincible repugnance to Democrats.

In 1852, when Dr. Palfrey was considering the question of becoming a candidate for the governorship, Judge Hoar wrote him as follows: —

WORCESTER, *September* 7, 1852.

MY DEAR SIR, — I received your letter of the 4th upon my return home late on Saturday evening, and did not reply yesterday, only because I wished to consult some other gentlemen, to whom I could speak in perfect confidence, and who would know more about the state of political opinion than I can do.

I can say in reply, that I know no reason to think, and do not believe, that any person whom the Free-Soil party should put in nomination for governor would receive more votes than you would. You have many warm personal friends, and many more warmly attached admirers of your political course. You would receive votes that another candidate would not. On the other hand, I presume there are some Democrats who would prefer a thoroughgoing man of their own persuasion, and some others who admired the "coalition" so much more than you originally, or I ever did, that they have felt indignant at your letter discouraging

that very efficient and now renowned measure. But I think these would more than be balanced on the popular vote. My father and other friends whom I have asked, are of the same opinion.

The only question I have is, whether, supposing that the allied armies succeed in carrying the legislature, and preventing a choice of governor by the people, and between themselves the office of governor should be distributed to the *Free-Soilers*, there might not be more difficulty in executing the plan if you were the candidate, from a suspicion on the Democratic side that you had no great admiration for the principles or characters of some of their leading men, and would not be likely in your administration of the office to bestow the expected share of "the spoils" upon profligate, mercenary, dishonest and incompetent party hacks. This difficulty I incline to think exists. What weight it should have, and which way it may effect your decision, it is not for me to say.

It is partly from entertaining such a suspicion, and for reasons resting on the same foundation, that, if the Free-Soilers are to have the governor next year, I should be most highly gratified that you should be the man. I ought not to, and do not in my present position take any part in political movements, so that whatever I say is in the expression of private friendship.

I am, my dear sir, as ever, your friend and firm adherent. E. R. HOAR.

When the Constitutional convention of 1853 framed a new constitution, which was adopted in the convention by the votes of Free-Soilers and Democrats against the opposition of the Whigs, Judge Hoar took part in a movement to secure its rejection by the people. His position is stated in the following letter to Dr. Palfrey: —

BOSTON, *Oct.* 7, 1853.

MY DEAR MR. PALFREY, — I should be very sorry to incur even the suspicion of inattention to a request of yours, and am sure I shall never intentionally deserve such an imputation. I have not forgotten my promise made when I last saw you, and your note reached me last Saturday, but the truth is that my time has been so incessantly occupied that I have not had time even to write to excuse myself, and have not been able yet to find or get a sight of that new constitution, which was the condition precedent to my agreement to note down some suggestions upon its provisions.

Under these circumstances I remain in the same situation as when we parted at the head of Somerset Street, and my objections to the constitution are based upon the knowledge of its provisions which I have gained from the newspapers, and from the address of the convention.

The chief objections which have impressed my mind are: —

I. That making clerks of courts elective by the people is an inconvenience and an absurdity; that the clerks at the State House might as well be chosen by the people, or any other officer whose duty merely requires him to make records of the doings of others under the direction of a superintending authority; that it is neither desired nor desirable; and will be practically a nuisance.

II. That making officers, in whose conduct the people of the whole Commonwealth have so deep an interest as judges of police courts and trial justices (especially the former), elective by a local constituency, is dangerous, and only not to be called a dangerous *experiment*, because, where it has been tried, it has proved uniformly mischievous and is no longer an experiment — this is aside from the objection that such a tenure and such a mode of appointment is not the best for any *judicial* officers.

III. The plan of representation, on which I can say nothing new.

IV. The vital and decisive objection in my mind to any constitution which strikes such a blow at the *independence* and the *ability* of the judiciary as the new tenure proposes.

Upon this, I can hardly add anything to what you will find in the speeches of Choate and Dana.

Perhaps I should not say as much as Dana does of the independence of the judiciary of *the people.*

The real question is, in what mode can the people exercise their acknowledged and undisputed power of appointing and removing judges at their pleasure, so as to secure for themselves the most faithful, able and successful discharge of the duties of the judicial office. The new mode seems to me to be the worst in principle that has been suggested.

It makes the judiciary dependent upon the executive, it tends to mingle our judges with political schemes and contests, and, in my judgment, will terminate the possibility of securing the services upon the bench of the first character and capacity of the bar.

I am still very much engaged, am writing in court, and cannot say more. I will only add that I understand that a meeting is soon to be called of all persons opposed to the new constitution, *without distinction of party*, and that I took the liberty to suggest to a gentleman who spoke of it your name, and that of Mr. C. F. Adams, and my father's, from the Free-Soilers, as persons that might be applied to, and to say that I hoped our friend Dana, and Mr. S. C. Phillips might be of the same persuasion.

Very truly and respectfully yours,

E. R. Hoar.

Senator Hoar states that he joined with Dr. Palfrey in preparing an argument against the

constitution, which was published as a pamphlet under Dr. Palfrey's name, and to this Judge Hoar contributed the legal argument and Dr. Palfrey the rest. The result of this opposition helped to defeat the constitution, though some of its obnoxious provisions were subsequently submitted separately and adopted by the people.

Richard H. Dana tells that at the anniversary of the "Story Association," in 1851, Choate delivered the oration, a defence of the Fugitive-Slave law and an attack on the Free-Soilers. Leading members of the party, to whom Choate had told his subject, stayed away. But the venerable Free-Soilers, President Quincy and Samuel Hoar, were there to hear the "youthful enthusiasm and inexperience of the party" spoken of with contempt; and so were Rockwood Hoar and Dana. These younger men stoutly stayed to the dinner, where General Carpenter of Rhode Island attacked that "miserable, conceited, fanatical faction."

"William Story (the sculptor), in returning thanks for his father's memory, spoke of introducing a regard for liberty in law and conscience into legislation. Judge Hoar's toast was also to the point, about love of liberty, reverence for law, and fear of God." Dana, too, alludes goodnaturedly to the vituperation, and says, "On the whole, they had the disgrace of making an ill-mannered attack, and we rather had the last word."

In April, 1854, as one of a Massachusetts delegation, the Judge visited Washington for the first time, and from his letter to Mrs. Hoar written there on April 16th the following extracts are taken : —

"I found at Willard's, of our Massachusetts delegation, Mr. Crocker of Taunton, Mr. Walley of Roxbury, and Mr. Dickinson of Amherst with his wife, son and daughter; Mr. Banks came in on Thursday evening, and I also found Mr. John C. B. Davis (formerly of Worcester, now of New York). I called at Sumner's and left a card on Thursday evening, and on Friday he called to see me, and has been very kind and serviceable since. On Friday morning I called on the President, and sent in my card; but finding that several gentlemen were waiting to see him on business, and receiving an answer that he would see me in about half an hour, I did not think the sight worth waiting for, and after looking round the house, took my leave.

"I have called on Mr. Chase of Ohio, and had a good long talk with him — a fine, noble-looking man of very graceful and impressive manners — and *to be* one of the great men of the country. I spent most of Friday evening with Governor Seward of New York, one of the men whose acquaintance I most wished to make; and yesterday forenoon, Sumner took me to see Mr. Benton, and I had an hour's good talk with him. The particulars of all these things I must reserve till I get

home. I walked about a mile with Gerrit Smith yesterday."

At the Republican State convention held at Worcester on September 7, 1854, Judge Hoar received forty-eight votes on the first ballot for governor. He was still a leader of the men who were soon to form the Republican party.

It was during his service on the bench that, at the Union celebration by Concord and the six neighboring towns of the seventy-fifth anniversary of Concord Fight, he was chosen president of the day. However often in private talk the Judge allowed his prejudices the luxury of a witty delivery, when he was in the chair on a public occasion, honor bound him to fairness and courtesy. On this occasion he gave due credit to Lexington and Acton with all generosity, and, as the last toast, gave "England, our Mother-Country; we have cause to speak well of our stock. The reason why the Essex and Middlesex farmers could front the power of England was that they had good West-of-England blood in their veins. We had half of England to sympathize with us through that war, and our fathers could afford to part with old England, for they had established a new England in the West." Then he bade the band play "God save the Queen."

CHAPTER IV

THE ACTIVITIES OF MIDDLE LIFE

JUDGE HOAR resigned his seat on the bench in the summer of 1855, and returned to the practice of his profession. Between the summer of 1855 and 1859 he was a lawyer in active practice, and from 1857 in partnership with Horace Gray, who was afterward Chief Justice of Massachusetts and later a justice of the Supreme Court of the United States — a partnership which was entirely congenial and resulted in a friendship which endured to the end. Of Judge Hoar's professional work during this period little trace has been preserved. A lawyer's daily work interests his clients and his contemporaries at the bar, but its records are "writ in water," and the most brilliant arguments, the most searching cross-examinations, the most skilful fence in trials are remembered for a few days, but, like the sagest advice in chambers, make no lasting impression on the memories of men. The dispute between two individuals is settled, a slight ripple in the daily life of the community sinks into the stream, and leaves no trace upon its surface. Luther Martin in his day was perhaps the most eminent lawyer in the United States. To-day few members of the bar have even

heard his name. It is not surprising, therefore, that no considerable record remains of Judge Hoar's professional activity during this interval in his judicial career.

These were the palmy days of the Middlesex bar, which, to quote from Governor Greenhalge, "seems to have been regarded, and perhaps justly, as marked to an uncommon degree by a spirit of belligerency, of contention; it seemed to live always in an atmosphere of disputation. From beginning to end, from the purchase of the writ to the levy of the execution, there was no quarter asked or given on either side. The struggle was rigorous and severe, uncompromising and unrelenting."

It was of this time doubtless that a contemporary spoke when he said that Judge Hoar and General Butler "divided the leading practice of Middlesex largely between them. They were probably opposed to each other in hundreds of cases, but Judge Hoar was victorious in every single case with the exception of a criminal case in the United States Court of Suffolk, in which Butler was associated with the United States Attorney in a prosecution for violation of the revenue laws, which was ended by a compromise judgment for the Government not unfavorable to the Judge's client." In later years it came to pass that these men met in many conflicts of greater importance.

To this period belongs doubtless this story.

During a closing argument for the defence, Butler stated with great emphasis to the jury, "We have the highest authority for saying, 'Everything which a man hath will he give for his life.'" Judge Hoar, in replying for the plaintiff, said, "It has for a long time been suspected by those who have watched Mr. Butler's career that he has recognized as the highest authority the individual upon whom he now relies. For, gentlemen, as you well know, the statement which he quotes from the Book of Job was made by Satan."

Of his political activity there is more to be said. Between 1852 and 1855 the rise of the American, or Know-Nothing party, with its anti-Catholic and anti-alien propaganda, for a while diverted public attention from the anti-slavery contest, and those who, like Adams and Hoar, did not sympathize with the Know-Nothings, were left without a party. This condition was necessarily transitory. The repeal of the Missouri Compromise in 1854, followed by the attempt to establish slavery in the territories of Kansas and Nebraska which had been consecrated to freedom, united the free states against the aggression of slavery, and the contest began again only to end at Appomattox.

Judge Hoar's resignation from the bench came just as the Republican party was organized in Massachusetts. A meeting held at Chapman Hall in Boston on August 16, 1855, over which Samuel Hoar presided, resulted in the call for a state con-

vention to be held at Worcester on September 20, and this call bears the signature of E. R. Hoar. The convention, composed of 1007 delegates representing 232 towns, was very successful. On the first ballot for governor Judge Hoar received 45 votes, but Julius Rockwell was nominated, and Judge Hoar was nominated by a unanimous vote for Attorney-General on motion of Richard H. Dana, only to be defeated at the polls. From his letter accepting the nomination the following extract is taken, since it states his position on the question of the day : —

" Whatever may be my personal wishes, I do not feel at liberty to decline the nomination which you communicate, nor by word or act to leave room for the slightest suggestion of a doubt of my cordial approval of the principles contained in the address and resolutions of the convention at Worcester, or of my entire sympathy with the Republican party of the Union.

" Since the day when a combination of Southern rapacity and Northern treachery took from us our share of the Missouri Compromise, the conviction has forced itself upon the minds of the people of Massachusetts that the institution of negro slavery is advancing with rapid strides to establish itself as the leading interest and dominant power of the country ; and that its advocates and supporters are striving, already with too much success, to enable it not only to control the policy,

to fill the offices, to occupy the territories, and wield the authority of the federal union, but to disturb the peace, corrupt the morals, and invade the personal rights and liberties of the citizens of the free states. The necessity of immediate, united, and efficient resistance to these aggressions, unless we intend to submit to them, is too plain for argument.

"With the exception of the supporters of the present national administration, and perhaps the further exception of that small number of timid and feeble-minded persons who really believe there is danger of a dissolution of the Union whenever there is an exhibition of courage or manliness on the part of Northern men, the purpose to make this resistance, in some form, is avowed by every one. The strength and sincerity of the purpose must soon be brought to a practical test. The presidential election is at hand, and we have soon to consider in what way the power of the administration, which is responsible alike for the repeal of the Missouri Compromise and for the outrages in Kansas, can be successfully encountered. In my judgment, regarding the question of the extension of slavery as the 'paramount issue' in our public affairs, and the aggressions of the slave interest the overshadowing danger of the Republic, our only hope is in a party having opposition to that extension and resistance to these aggressions, by all constitutional means and within legal limits, as its

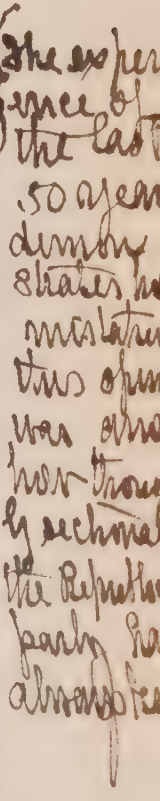
leading object. Such a party is the Republican party of the United States, already formed and victorious in several of the states of the Union, and which the action of the convention at Worcester inaugurated so hopefully in Massachusetts.

"Two objections are chiefly urged against it: that it is based upon a single issue, and that it is sectional.

"Of the former it is perhaps enough to say, that political objects are usually to be attained only by political organizations. Parties can only be formed by the union of a sufficient number of men, who consent to waive for the time, or to pursue by other methods, the objects upon which they differ, in order to secure those upon which they agree. To form an efficient and strong party, there must be some great leading principle or idea, around which all others arrange themselves. If there are other subordinate questions which you think important, consider that you lose nothing after all; that if you are strong enough to carry them alone, you would, of course, have the same or a greater proportionate strength in your new relation; and if your views are sound, there would be a much greater likelihood of impressing them upon your associates and allies, with whom you are connected by ties of confidence and good-will in a common cause, than upon the members of hostile organizations.

"That the Republican party is *sectional*, in any

obnoxious sense of that term, we may safely deny. In the first place, there is no danger that any party which can show itself strong enough to carry the North, will not be able to secure a reasonable and sufficient quantity of Southern support. The fact that men in the free states can be found who support the present administration, is enough to demonstrate that no party need fear about being national, while it has any prospect of success. But, more seriously, our objects are such as affect the whole national policy of the government, and our action is upon strictly national issues.



"There are many wise and just men in the Southern states who have denounced the repeal of the Missouri Compromise as impolitic and dishonorable, and who would unite with any manly and vigorous effort to redress the wrong. And, further than this, it is difficult to see why the reasoning which would oppose the organization of a party to resist the encroachments of slavery, because it would be sectional or geographical, must not, to be consistent, oppose all party action on the subject. It is obviously only a difference in mode and degree, and not in kind. If opposition to the extension of slavery may be one of the principles of your party, it may certainly be made the prominent and chief one, if its importance requires it. So far as you oppose slavery at all, so far you separate yourself from the coöperation of slaveholders!"

He was not elected, but he took an active part in the campaign and made several speeches of which no record seems to have been preserved. During the campaign the Boston "Advertiser" alluded to the fact that, while he was on the bench of the Common Pleas, Governor Gardner had made him a commissioner under the Personal Liberty law of Massachusetts, one of the statutes then enacted in the Northern states to protect their citizens against the Fugitive-Slave law, and upon this founded some disparaging observations. The editorial drew from Judge Hoar the following letter to the editor: —

39 Court St., BOSTON, *Nov.* 1, 1855.

DEAR SIR, — I have received, and thank you for the courtesy of your letter, but its reasoning fails to satisfy me that you had any justification for the statements in the article which you enclose.

The facts are briefly these — Governor Gardner sent me a commission under the Personal Liberty Bill — without consulting me, or any previous intimation from any quarter that it was coming — by mail; I found it on my table at evening, and as soon as I had opened it, I turned to the constitution of Massachusetts, to be able to quote it with accuracy, and immediately enclosed the commission to the Secretary of State, stating that, under the constitution, I could not accept it without

resigning my office of judge. The Personal Liberty Bill I had not, at that time, even read, and if I had, I suppose you will agree with me that it would not have been decent or proper in a judicial officer to volunteer the publication of an opinion on the constitutionality of a statute which it might be his duty at some time officially to consider.

My *appointment* was *unconstitutional*, and that was enough for me. I held the document in my possession about ten minutes, and Mr. Chapman is at this moment just as much an "appointed minister" of the act, as I am, and rather more so. I have never, to my recollection, expressed to any person my opinion of the constitutionality of the act, in any particular, — certainly, I have never said any more in favor of it than I think every lawyer in the state would agree with.

Under these circumstances, if you think you are justified in stating to your readers that I "*was doubtless nominated solely with reference to*" my "*support of the personal liberty Act*," I "*too being one of the commissioners appointed under its provisions*"; and that I am an "*appointed minister*" of the act, your notions of the force of language, and of the right to make statements about other men, are too different from mine to make any discussion between us useful.

The alternative which, so civilly in language, but so remarkably as it seems to me in substance, you suggest of allowing you to attribute to me

such opinions as you choose without any grounds of authority, or of furnishing the *public* with a full statement of what opinions I do hold, through the columns of the "Daily Advertiser," I must respectfully decline.

Allow me to add, in closing, that my object in addressing you was by no means political — I do not like to have my opinions on professional questions stated by others without authority, but if it were in your power truthfully to say anything which would prevent my election to the office of Attorney-General, you would do me a great service.

With all due respect
Your obedient servant,
E. R. Hoar.

At a meeting of the Republican State Committee on February 14, 1856, he was made one of forty delegates to attend an informal convention of Republicans held at Pittsburg on February 22, and was the Massachusetts member of the committee on resolutions appointed by that convention.

This convention called a national convention of the party, which assembled at Philadelphia on June 17, 1856, and was a remarkable body of men, eminent for high moral character and political service. Judge Hoar again represented Massachusetts on the committee appointed to prepare the platform, to which he contributed among

other things the epigrammatic phrase so often quoted, "those twin relics of barbarism, polygamy and slavery." He was also one of a committee of ten to notify the nominees of the convention, and he called up the resolution fixing the place for the next national convention, saying, as reported: —

"If we are successful in this election we may hold our next convention in Kentucky or Virginia. Massachusetts desires to advance her column to the South, for ours is a national party. The Democrats have called their next convention to meet in South Carolina, and if they persevere in their present policy they will never dare to show themselves north of that State."

On June 23, he was among the principal speakers at a great meeting in Faneuil Hall, called to ratify the Republican nominations, and in his speech predicted that Frémont would get 100,000 votes in Massachusetts, a prophecy which was more than realized. He took an active part in the campaign of 1856. It was during the spring of that year that, in writing to his cousin William M. Evarts, to congratulate him on his so-called "Tabernacle Speech," he said: —

"What a state of things for Massachusetts that such a meeting as yours cannot be held in Boston! And in place of it all manner of little personal jealousies and small malignities, and reorganizations of what they choose to call the Whig Party — con-

found them for bringing such disgrace on that noble old name!"

In 1857, he was elected an Overseer of Harvard College by the Legislature of Massachusetts and held the office till the following year, when he was elected a member of the Corporation. He held this office till 1868, when he resigned, and was at once elected an Overseer by the alumni. He was made President of the Board, an office which he continued to fill until 1880, when his term expired and under the law he was ineligible for a year. He was reëlected in 1881, and again chosen President, serving until 1887, when his twenty-nine years of service in the two governing boards of Harvard College ended. It was very soon after he became an Overseer that he made a very important contribution to the settlement of the mooted question as to the relative powers of the Corporation and the Board of Overseers. In a speech made March 12, 1857, and reported in the Boston "Advertiser" of the next day, he upheld the powers of the latter Board, amplifying at some length the propositions which he stated thus: —

"There are two classes of functions which the Corporation discharges. One is the possession and control of the property of the college as property, providing for its security, its investment, its care. The other is the application of this property to the work of the college, applying it to the purpose for which the college was founded, the education of

the youth of the state. With the first function, in my judgment, the Board of Overseers have very little to do by the charter of the college, unless in the exercise of the visitational power to guard against its abuse, which does not appear likely to occur, but with which, for the satisfaction of this community, the less this Board interferes the better; the other is the application of all the means and powers at the disposal of the Corporation to the practical work of educating youth. With that it seems to me to be the intention of the charter to entrust powers to the Board of Overseers of supervision, of concurrence, and of action coextensive with the duties of the Corporation."

Whenever this question becomes pressing this argument will be found most instructive and illuminating.

On April 12, 1859, Judge Hoar was appointed an associate justice of the Supreme Judicial Court of Massachusetts by Governor Banks, and on April 16, he took his seat on that bench. He continued to hold this position until March, 1869, and for the next ten years his life was comparatively uneventful.

In this position he displayed a clear and incisive mind, a competent knowledge of law, a thorough understanding of the people whose disputes he was called upon to decide, and above all a rare fund of "saving common sense." The combination made him an excellent judge. His mind moved

rapidly, and his quickness in grasping the point of a case, or the essence of a witness's testimony, made him sometimes impatient of the slower processes by which counsel reached their results, of prolix discussion and tedious cross-examination. The expression of this impatience sometimes irritated counsel, and it was said by one of them that the Judge was often "unhappy because he could not decide against both parties to the case." A tradition of bad manners had been for some time associated with the Supreme Court of Massachusetts when he was appointed to that bench, and suffering as he often was from dyspepsia, it is not perhaps strange that he did not redeem its reputation in this respect, but his manner was of the surface. His essential kindness of heart, his genuine love of justice, his high sense of judicial responsibility, prevented his doing any wrong to the parties, and he was by nature ready to relieve any injury which a thoughtless remark might do to another's feelings.

His judgments are found in twenty-three volumes of the Massachusetts Reports (from the 13th of Gray to the 101st of Massachusetts, both inclusive) and in only one case did he write a dissenting opinion. He wrote many opinions which did not bear his name, but are printed as, "By the Court," and he told Mr. Justice Hammond that when he had written "Hoar, J." at the top of a sheet of paper he considered the opinion at

X The meaning of this is not apparent, though it hints at brevity.

least half written. His judgments are clear and brief. They are not overloaded with authorities, nor are they elaborate discussions of principle. He was content to take the case presented and decide it, citing only a few authorities for his conclusions. The distinguishing characteristics of his decisions are a firm grasp of essential principles and strong good sense, than which no qualities are more important in a judge. X

His successor, Chief Justice Field, thus characterized him: —

"His published opinions while a judge on our Supreme Court, where he continued for nearly ten years, are the best evidence of the kind of judge he was. Those opinions, as a rule, are not long; they begin directly with the discussion of the questions of law involved; they are exceedingly clear; the analysis of the case is perfect; authorities are cited when necessary, but there is no great display of authorities; and the opinion ends when the argument ends, and there is robust good sense manifest throughout. There is no attempt at display, and very little discussion of subjects that might be interesting, but are not strictly necessary to the decision. . . . I am informed that he rarely made more than one draft; that he formulated what he had to say in his mind before he wrote anything, and that he made very few changes in the revision. . . . I tried a few cases before him, as well when he was sitting at

X There can be no question that he was a very able Judge.

nisi prius as on the bench; and it was impossible not to notice the quickness of his perceptions, the keenness of his logic, and his dislike of any conduct in a cause which was not directly pertinent to the issues and did not throw light upon the trial. He had the impatience natural to very quick minds at the slow processes of duller men, and he especially disliked any indirection, any arguments that missed the point of the case, and any pretensions and affectations of thought or feeling that were intended or were likely to mislead."

One of his eminent professional brethren spoke thus of his decisions: "The judicial records of Massachusetts are full of the important cases which he has either conducted or decided, and no small part of that reputation which will live for many years will be found recorded in the judicial records of our state."

Said another: "His mind had a wonderful clarifying power, like some chemical dropped into muddy and opaque waters, precipitating everything that did not belong in the arguments presented to the court."

The Hon. Charles Allen, himself for many years a distinguished member of the same court, has furnished the following reminiscences: —

"Judge Hoar was in the Supreme Judicial Court all the time that I was reporter. His opinions came to me written in his own clear handwriting

with very few erasures or corrections, paragraphed, punctuated, capitalized, so as to need no editing in these particulars. The doctrines intended to be decided were so stated as to make the preparation of the headnotes comparatively easy ; he very seldom asked to have an opinion returned for further revision by him, and almost never cared to see the proof-sheets. He was also prompt in the disposal of cases. After the doctrine was settled, the expression of it in proper terms seemed easy to him. I remember once he wrote an opinion in the railway station at Pittsfield while we were waiting for a train, and gave it to me. I would not mention this, if his opinions showed any lack of due care, any signs of haste in the preparation. But they did not. His intellect was like a machine in good order, and he was able to give full attention to a subject at once."

He adds that, while listening to the arguments before the full court, he had the habit of putting questions to the counsel — questions sometimes hard to answer. "In his last two or three years on the bench he seldom did this."

Chief Justice Field said: "No jury ever left their seats where he presided without having plainly and forcibly presented to them the exact issues to be determined."

Mr. Goulding of the Worcester bar spoke of him thus:—

"He illustrated in a very remarkable manner,

as it seems to me, how immensely the individuality and personal genius of the judge can add to the weight of his official utterances. The great judgments which abide and which become the landmarks of the law derive their chief importance, not from their relation to positive constitutions, but from their relation to universal reason, and to the underlying verities and forces of morality; and that relation it is the business of a man to discover and to state. In a great cause, presented for final adjudication, the question and the man meet; but the man is much the larger term in the equation."

A striking testimony was that of Governor Greenhalge: —

"His judgments were independent; they had about them virility, freshness and power. There was not a drop of sluggish blood in his veins. The shot fired at Concord emancipated his mind as well as his country. I say this because even to-day, in some judicial decisions, can be heard the rattle of chains. Intellectual freedom and independence are of as much value as political independence. He respected precedent, but he did not permit precedent to play the part of tyrant."

It was a hard-working court, as we may gather from his letters, for on January 23, 1861, he writes, "We are worked day and night in the court, and likely to be for some time yet"; and on April 16, 1863, "I have a court to hold every

week from next Monday to the first week in June." Again, November 11, 1868, "I held the term for trials eleven weeks last spring."

Now that the railroads had come, the Judge could have an office in Boston and keep his home in Concord, though he had to be much in the cars. In writing to his brother, he speaks of the "uncertainties of life and of Groton Junction," and says that he is having "an interval of learned leisure at home, *i. e.*, thirteen opinions to write before the first of March."

His residence in Concord proved fortunate for his neighbor, Frank B. Sanborn. In those years the elements of the strife between the irreconcilable opinions and systems of life North and South were hotly smouldering, and the issues were growing clearer, when the thunderclap of the John Brown raid startled North and South alike and precipitated public opinion. Concord was involved, because one of her citizens was a friend of John Brown, and might have been cognizant of this attempt. Judge Hoar was aroused late one evening by the ringing of the great bell of the church, heard from an excited messenger that the United States Marshal's deputies were trying to carry off Mr. Sanborn by force, and that his neighbors were, thus far, successfully resisting his abduction. He hastily issued a writ of *habeas corpus*, which the bailiffs, surrounded by angry men and women and the pupils of Mr. Sanborn's school, had no choice

but to respect, and, after some rough handling, they withdrew. Mr. Sanborn appeared next day in the Massachusetts Supreme Court, Chief Justice Shaw and Justices Metcalf, Merrick and Hoar sitting, was represented by John A. Andrew, and was discharged. He had very narrowly escaped being hurried secretly to Washington, to abide the result of having disobeyed the summons of a Senatorial committee hunting for treason.

Though on the bench, Judge Hoar did not, in the great crisis of his country's history, lose his interest in politics. In the autumn of 1860 he went to the State convention as a delegate from Concord, and helped to nominate John A. Andrew for governor.

Lincoln's election as President blew the coals of wrath into flames which were bursting out in every direction. Still the fatal necessity of war was hardly accepted in the North, and in the first months of 1861 there was much talk of compromise and concession to appease the imperious cotton states. Mr. Evarts had been spoken of as the successor in the Senate of Seward, Lincoln's new Secretary of State. In January, his Concord kinsman wrote to him urging his acceptance, and said: —

"My own judgment is made up upon this state of things. The constitution is to be upheld and maintained, not reconstructed. The laws are to be faithfully and fearlessly administered, not modi-

fied and tinkered to suit the projects of conspirators and traitors. Nothing is so certain of success, or sure to be popular in the long run, as resolute purpose. Abraham Lincoln's silence, thus far, has given me great faith in him, and when the time comes for him to speak, I trust we shall have the voice of the Republican Party on the Republican platform. . . . I keep my faith in Seward, though I cannot make much of his speech, except as the old lady said of her minister whose sermons she did not understand, 'that he has a heavenly tone.' . . . If we ever come to a righteous settlement with South Carolina, I should be very sorry not to be present at it in some capacity."

April came, and with its first days the fall of Fort Sumter. All doubt was cleared away, the flags went up. No state was readier than Massachusetts, no towns than Concord and her daughter towns. The Judge had passed the military age by two months, and was not physically fit for campaigning. But all through the war he served the country, the state and the town, with his influence, his labor and his purse. A notable instance occurred on the anniversary of Concord's great day, when her company was to leave for the front.

On the morning of the Nineteenth of April, 1861, when the old "Concord Artillery," which had been changed to an infantry company, had received orders to join its regiment (the 5th Massachusetts) in Boston and go to Washington, then

in imminent danger of capture by the rebels, and it became known that their good captain could not then go, for family reasons of commanding importance, great disappointment and depression were felt by the soldiers. An eye-witness thus describes the events of that morning: —

"I was then a schoolboy, and when I came down town the rumor ran that very likely the company would be broken up and not go, but that Judge Hoar was going to speak to them. I went up into the Town Hall where they had mustered, and saw them formed and marched around the hall by Lieut. George L. Prescott.[1] He halted them on the south side of the hall, faced and addressed them, and gave the command 'Order Arms!' The men stood there, silent and troubled.

"Judge Hoar came forward, uncovered, and stood for a moment looking steadfastly at them in the middle of the hall. Then he spoke to them of their country, its danger, its call to them, their duty to Concord, the example of their fathers, — his voice very solemn, but with increasing power and spirit as he went on.

"This picture, which I saw from the gallery, is fresh in my memory, but of his words I only remember the last. He reminded the men how New England had always been a focus from which

[1] A brave and faithful soldier, who, as Colonel of the 32d Infantry M. V. M., was killed in battle before Petersburg, Va., in 1864.

knowledge and virtue had spread abroad over the land; how she had always furnished teachers to the West and especially to the South; how they were that day summoned to the South to save the country, 'and to teach *there*, and to your children in later years, what we all learned when we were *so high*' (putting his hand at the height of a five-year-old child), 'the boundaries of the United States, — North by the British Provinces, East by the Atlantic Ocean, *South by the Gulf of Mexico!*' and the 'West' was drowned in the thunder of the musket-butts. Doubt and depression were gone. At noon the company, in their old-time Napoleonic uniform, were arrayed under the flag-staff cut that morning in Walden Woods, the flag was run up, saluted by the cannon, while the young women sang the Star-Spangled Banner. Mr. Reynolds made a solemn prayer, and 'mid cheers and tears, accompanied by all Concord, her soldiers marched to the train."

Just ten days later Governor Andrew writes a letter introducing Judge Hoar to Hon. Simon Cameron, Secretary of War, as "one of our most eminent men," and says, "I trust he may have an opportunity for conference with the Government at Washington, especially with regard to our Massachusetts movement, opinions and troops." Mr. John M. Forbes with prompt energy had secured the vessels *Cambridge* and *Pembroke* for the state, to transport her troops, and later her bountiful supplies, and those poured in by private hands.

Fit agents to distribute these were needed. Also complaints of discomfort and privation came from some regiments. The Governor wished these looked into by men of tact and force. He sent such, in the persons of Judge Hoar and Dr. S. G. Howe. The former was also, if possible, to induce the Secretary of the Navy to take the two transports off the hands of the state and reimburse it for its expenses.

As the temporary agent of Massachusetts, Judge Hoar did admirably. Young Charles Russell Lowell, later the distinguished cavalry commander, succeeded Judge Hoar in this work, until he received his captaincy; and, writing of the need of a good permanent agent, said, "Where so much is to be done it ought to be done by the best man and with the best tact; otherwise it will be undone, or done wrong. Judge Hoar was admirable. He always persisted till he got his answer."

The following extracts from his letters show what he was doing, and throw some light on the situation.

To J. M. Forbes

Washington, *May* 1, 1861.

. . . I have seen besides Cameron, Chase and the President; Cameron professes to be up to the full idea of Massachusetts as to vigorous measures; Chase has the same notions, and the President hopes the people will be patient — remember that

but two weeks have gone by since the first requisition for troops, since the Government knew what they had to rely on from the people; that the states have not yet done what the Government has asked them to do, although they have done vastly more than any people ever did in the same time; and that a grave test of the real purpose to do all in their power to carry on the contest effectively will be found in the response made to the call for money under the new loan.

The most efficient service that could be rendered in Massachusetts, New York, Rhode Island, and Pennsylvania at the present moment, would, in his and Mr. Chase's opinion, be an agreement by the banks of Massachusetts, Providence, New York, and Philadelphia, to take the $14,000,000 called for at par. Cannot the banks of Massachusetts set the example by agreeing to take their share? It would put the credit of the country on a stronger footing at once, be a great help in obtaining a large loan in Europe when Congress meets, and exert an influence upon our own people and upon the rebels of incalculable value. I have no doubt that the country banks would take their full proportion. Can you and Mr. Hooper do anything to bring it about? The example of Boston would make it very hard for New York and Philadelphia to hold back. You may probably have seen Mr. Chase's letter to Mr. Hooper, which tells the whole story. . . .

To the Same

Washington, *May* 4, 1861.

. . . I have seen Charles Lowell, and you will hear that he has had the promise of a lieutenant's commission in the Army. I have strongly recommended him to Gen. Butler for immediate employment, and he has gone to Annapolis in pursuit of it — and I think he will get it.

You may rest assured that we "have a government," and I am satisfied that it will come up to the demands and purposes of the people. Only be patient and have confidence. We have got beyond "the defence of the Capitol," and plans of active and energetic operations in several directions are maturing, and will be executed as fast as is consistent with making the result certain. . . .

Boston can do nothing so important or serviceable as to carry through Chase's proposition about the loan. I hope you will move heaven and earth to accomplish it.

We wrote more fully to the Governor and William Gray about it, and I presume you saw the letters. . . .

May 7, he writes of Charles Lowell that "he is sensible, efficient and a trump into the bargain. I have recommended the Governor to make him general agent here."

The two friends, Forbes and Hoar, felt that al-

most the best service they could do to their state and her soldiers, and thus to their country, was to watch over and help our "War-Governor," and save his life by reasonable attention to his body's needs. One Saturday afternoon, the Judge went to the State House, and sent up the following note to the Executive Chamber: —

My dear Fellow, — I came to seize you and take you down to dine at our Saturday Club — where we expect Motley — for your soul's salvation, or body's, at least. Send that foolish Council away till Monday. A man who has no respect for Saturday afternoon has but one step to take to join in abolishing the Fourth of July. "The Court, having considered your case, do adjudge" that you come down — if you can't come now, come down half an hour hence — to Parker's.

Yours,

E. R. Hoar.

When, in the first days of the war, the flag suddenly blossomed everywhere, his son Samuel wished that his father would buy one and have a ceremonious "raising." He was eagerly pressing the matter one day, when his father ended the matter by saying, "My boy, I believe in a patriotism *that never flags.*"

But the shadow of war was soon to darken for a time his threshold. His eldest son was the kind

of boy for whom the conditions of his home were unfavorable. He was of quick and eager disposition, intelligent and restlessly active. At certain stages of growth this makes a boy mischievous and troublesome. His father was necessarily much away from home; his mother much an invalid, and not blessed with the power of showing the tenderness she felt. Both loved the boy, but felt keenly their duty as parents and inheritors of a stern tradition.

It is often the case that parents approach the problem of rearing their family with a strong sense of responsibility and a watchfulness for shortcomings which makes the lot of the earlier children hard, but that when the full force of the parental conscience has wreaked itself on these its rigor is abated. Whether its edge is blunted by exercise, or experience teaches the wisdom of gentler methods, it is certain that the first-born often laments loudly the foolish weakness of his parents in dealing with his successors, and contrasts it with the stricter rules imposed on him, resolving at the same time to pursue with his own progeny the harder but better way.

This doubtless happened in the family of Judge Hoar. To a very tender heart he united a stern sense of duty, and during the period of stress and strain, when he was working hard and travelling much, inevitable fatigue doubtless added a certain pungency to his words. As he grew older his tenderness got the better of conscience and tradition,

and none of his children thereafter could complain that he was not all that a father could be. It is pleasant to read in this connection the words of his son Charles, who, writing to his sister about his father, said: "May the crocuses soon come to break up your winter — those 'flowers through the snow' reminding us all of the love and tenderness that no austerity ever concealed from his children." Samuel, as the eldest son, had an affectionate nature that would have responded quickly to a show of love and confidence; but he was a little hardened by his experience both at home and at school, where he was rather hardly dealt with for his petty disorders. The war, besides its call to every boy of spirit, seemed to open a way of relief at this restless epoch of his life. Though a year under military age, he was allowed to join Concord's second company, which was expected to be rather a "home-guard." In an emergency it was called out, but the need passed away and it got no farther than Boston; but young Hoar ran away and enlisted in a Maine regiment.

Before he was found, his father, in a newspaper "personal," had notified the boy that, if he would return, he should be allowed to go to the war. He was transferred to the 48th Massachusetts Regiment, and served with great credit in the Port Hudson Campaign, whence he returned, just alive, after a fever contracted in camp. There is

a Spartan tone in this letter to his brother George, written by the Judge on June 16, 1863.

"We had a grand letter from Sam last night. He was in both the Port Hudson fights; was not in the part of the regiment that ran on the 21st; marched over the field of a quarter of a mile of felled trees up to the line of the entrenchments, — Balaklava fashion, — the next man to him had his head carried off by a cannon-ball. He had no expectation of coming out alive, and had a pretty narrow chance. He is acting as orderly sergeant of his company, thinks he has everything to do, gets little to eat or drink, and not much sleep — but is perfectly well and unhurt. Laus Deo!"

The Judge wrote to Mr. Evarts, whose son had followed Sam's example: "If the boy comes off with life and limbs, I do not feel sure but it may turn out the best thing that could have happened to him. It certainly did in Sam's case."

Thence dated a happy relation between father and son. The war had sobered the boy, made a manly youth of him, and he had found how he loved his home. He said he hoped now to be as much of a comfort there, as before he had been a trial; and so it proved.

The war dragged along. The times were hard indeed. The best men had gone as volunteers, and many of them had lost their lives, or had come home broken in strength. Concord, like every village throughout the land, had had her bitter

griefs. Recruiting was difficult, bounties enormous; yet the people would not abandon the contest, — least of all would the men in the field. But it was a heavy task for the elders at home to meet the steady demand for men and money. Mr. Emerson left in his journal this picture: —

"*November* 15, 1863. At the Town Meeting one is impressed with the accumulated virility of the four or five men who speak so well to the point and so easily handle the affairs of the town; only four last night (Heywood, Fay, Brooks, Hoar), and all so good that they would have satisfied me had it been in Boston or in Washington. The speech of Judge Hoar was perfect, and to that handful of people, who heartily applauded it. When a good man rises in the cold and malicious assembly, you think, 'Well, it would be more prudent to be silent. Why not rest on a good past? Nobody doubts your talent and power; and, for the present business, we know all about it and are tired of being pushed into patriotism by people who stay at home.' But he, taking no counsel of past things, but only of the inspiration of his to-day's feelings, surprises them with his tidings, his better knowledge, his larger view, his steady gaze at the new and future event whereof they had not thought; and they are interested like so many children, and carried off out of all recollection of their malignant nonsense, and he gains his victory by prophecy where

they expected repetition. He knew beforehand that they were looking behind, and that he was looking ahead, and therefore it was wise to speak. What a god-send are these people to a town!

"And the Judge, — what a faculty! He is put together like a Waltham watch, or like a locomotive just finished from the Tredegar Works."

Later in 1863 Mr. Evarts was sent to England to help in dealing with the questions raised by the fitting out of Confederate privateers and war vessels in English ports. To him in February, 1864, Judge Hoar wrote a letter from which the following extracts are taken: —

"I had hardly read your parting words about the Chief Justiceship, when the telegraph brought the disgusting intelligence, 'Chief Justice Taney is better,' and the tenor of all subsequent advices has been of the same disagreeable character. My own feelings on the subject are very precisely expressed in the item cut from a Boston paper which I enclose.

"You have probably seen that Black has resigned his office of reporter to the Supreme Court — a proceeding which gives general satisfaction. His second volume gives 375 pages to the report of a case of his own, of no very extraordinary public interest, filling more than half the book, while he omits all notice of your argument in the Prize Cases — an outrage unparalleled, and which re-

ceives universal reprobation. It is a pity that a decent and competent man cannot be found for reporter, yet we have had none since Wheaton. Peters was too bad, Howard worse, and Black has certainly shown great capacity in going beyond both in the descending scale.

"We notice that Chief Baron Pollock has been distinguishing himself again in the Alexandra case. I do not think he would be flattered by the comments which his exhibition has elicited on this side of the water. But I suppose the case will go further and that Laird will be bought off by the British Government. There is not much public or private news stirring just now. Burnside has been visiting Boston, and had a cordial reception. We gave him a dinner at the Union Club, at which I sat next him and heard his account of Antietam and some of his other doings, and was much comforted by his assurance that we could hold Knoxville — which has been strongly threatened — against any force the rebels can bring against it. He seems a very modest, well-meaning, faithful man — who means to do his best, and I like him. I fear that even the war cannot keep our people out of the usual scramble of a Presidential election, and the signs thicken which indicate that even the nomination of Lincoln may not be effected without a considerable struggle, and perhaps not without serious dissensions."

That the Judge was not altogether satisfied

with President Lincoln appears in a letter written on May 4, 1864, to Mr. Forbes, who also was often impatient with his "waiting for the people."

MY DEAR SIR, — I have been holding court at Lowell and did not get your letter till my return home this afternoon.

I have read all the papers you send, and my best judgment on the whole matter is: —

I. That the call for the Baltimore convention is unexceptionable, and includes every loyal man in the country. That an attempt to make it more particular, by addressing persons of any particular class, would be likely to alienate more than it would conciliate. Every man that means honestly by the country can attend the convention or act in selecting delegates, as fully as he chooses, if he is willing to take an equal place, and stand on equal ground with the rest so far as the adoption of specific measures is concerned.

II. I think it would have been originally wiser to call the convention for a later day, but I doubt whether it is now practicable to postpone it, and, unless it is done, I think the attempt to do it likely to prove mischievous.

III. I have come at last, though slowly and reluctantly, to the decided conviction, not only that Mr. Lincoln will be certain to be nominated in June, but that he would be equally certain to be nominated in September; and further, that if he

were not nominated at either time, it would be from reasons and the operation of causes which would leave it of no sort of consequence who should be nominated. I think, if we get into a condition — through Grant's failure, or by "drifting" — such that the people will not tolerate Lincoln, it will be by abandoning the whole concern, and that there is more danger that objection to the nomination of some one else would be made the pretext for deserting to the enemy, than any other; but particularly,

IV. I am sorry to say I see no man with whom, if we could have him, I should be satisfied that we would be better off than with Lincoln, all things considered. I am afraid, in short, that he represents about the average result (and perhaps even a little better than that) of all that we have to trust to for suppressing the rebellion.

In the latter part of 1864 he interested himself actively in promoting the candidacy of Mr. Evarts for the Chief Justiceship of the United States, and the following extracts are taken from his letters on the subject to Mr. Evarts.

October 30, 1864, he wrote: —

"First, I know that I can procure the unanimous opinion of our court in your favor. The Chief Justice has said to me that he thinks your appointment would be the best that could be made; Gray and Chapman think the same actively, and the

other two would concur. I saw the Governor yesterday, and he thinks likewise . . . Sumner I have seen twice, the last time yesterday at our club at dinner, and have had a full and free conversation with him. He is entirely in the interest of Chase, and if his appointment is possible, will spare no efforts to secure it. This is not strange when you remember those years when he and Chase and Hale stood alone in the Senate, subject to everything which the malice of the 'lords of the lash' could devise, and outside of any healthy political organization. The most I could do with him, and all that I attempted, was to satisfy him that if, by any accident, Chase should fail to be appointed, or did not wish to be appointed, you were the next person by all odds. And I think, though I am not wholly sure, that I have put him in that condition of mind. He has a very high estimation of you, and is especially impressed by the impression you made in English society. . . .

"But, on the other hand, I am afraid that the appointment of Chase is a fixed fact. One thing I *know*, and may say to you confidentially, that he will take it, and give up politics forever, if he can get it. And further than that, I learn from sources which I believe that the President has promised to appoint him. I do not mean the old promise, but a new one within a fortnight. Of course, every future intended presidential candidate on our side will want Chase put out of his way.

"I talked with Eliot the other day, and was charmed to find how warmly he received the idea of your appointment, but had my gratification suddenly brought to a stand by finding that he thought Curtis Noyes would do just about as well."

On November 16, 1864, he wrote: —

"I got Andrew to dine with me to-day, and instead of writing, he will go to Washington himself next Monday, and, I think, will be the best attorney you will have from New England. . . . He is going on purpose to labor with the President, to make sure, if he can, that the office is rightly filled, and thinks you the best man for it, if your opinions are sound on two points: 1, that the rights of everybody under the Emancipation Proclamation are to be held sacred; 2, that, as to states that have made war on us, the war is not to be considered as ended until *we* are ready so to regard it, and that military power is to be applied until our safety in their return to duty can be secured. I vouched for your sanity on both points, and he is satisfied. . . .

"The President knows all about Chase that anybody can tell him. If he intends to appoint him, nobody can help it. If he does not, the man most likely to receive the appointment is not the man to whom Chase will look as his active enemy. He may not be able to get the appointment himself, and yet may have influence enough to upset his

X Sohe was one of the authors of the infamous policy of reconstruction after the war.

chief rivals. What I want is to have Chase and Stanton the Kilkenny cats, and have you come in as the innocent third person — on grounds aside from politics."

At last the cloud of war swept away and sunshine returned. When Concord's soldiers of the three years' regiments — some too who had reenlisted — returned, the people gathered in the Town Hall to greet them. The Judge stood before them and called up one and another by name, with a word or two of praise and affection: "Sergeant Charles Bartlett, come up. We want to shake hands with you: we love you for your mother." "Captain Humphrey Buttrick, we are proud of you, son of that honored name!" and so on.

And it was he who wrote for the monument which Concord erected in memory of her soldiers, the simple and beautiful inscription: —

THE TOWN OF CONCORD
BUILDS THIS MONUMENT
IN MEMORY OF THE BRAVE MEN
WHOSE NAMES IT BEARS
AND RECORDS WITH GRATEFUL PRIDE
THAT THEY FOUND HERE
A BIRTHPLACE HOME OR GRAVE

To go back a little chronologically, a few months before Judge Hoar assumed the heavy work of the Supreme Court, he had a pleasant and notable vacation experience as one of a camping

party in the Adirondack Wilderness. The company were Agassiz, Lowell, Emerson, John Holmes, Jeffries Wyman, Estes Howe, Woodman, Binney, and William J. Stillman. The last, an artist and an all-accomplished woodsman, was captain of the party. His painting of them in their camp on Follansbee Pond was bought by Judge Hoar and now hangs in the Concord Library. Mr. Emerson celebrated the happy fortnight's experiences in his poem "The Adirondacs." The Judge, not being in good health, perhaps did not find the life beneficial, though he keenly enjoyed the company. Leaving camp earlier than the others, he went to Saratoga Springs, and writes to Mrs. Hoar: —

"I came in from the lakes and mountains yesterday — considerably browner and wiser than I went. Neither Mr. Emerson nor I have shot the other, and Mr. Emerson has passed for a very creditable woodsman. I think all our party have had a good time."

To Mrs. E. R. Hoar

Saratoga, *Aug.* 15, 1858.

. . . Our party reached Lake George on Monday evening, a fortnight ago, getting no dinner on the way, and riding the sixteen miles over the plank road from Moreau. We went down the Lake on Tuesday, took the boat from Burlington, crossed Lake Champlain by another steamer fourteen miles to Fort Kent, and went by stage four miles

to Keeseville the same night. There I bought two pairs of drawers and a gauze veil. There were eight in the party, Emerson, Woodman, Agassiz, Wyman, Howe, Lowell, John Holmes and myself. . . . Mr. Stillman, who met us there, started after dinner on our expedition. We went up the Saranac Lake, six miles then by the Saranac River to Round Lake, across that three miles, then by Saranac River again, then across a "carry" where we leave the boats, walk a quarter of a mile, and the guides carry the boats and baggage, round some falls, to the Upper Saranac Lake, then three miles across the lower end of that to the "Indian Carry," a mile long, to the log-house of Stephen Martin, where we took supper and lodging, the latter consisting of the floor of the attic. It rained hard all night, the mosquitoes and midges were thick, we did not undress, and this with the boards under us, was a specimen to begin with. . . . On Friday at 10 o'clock we started again, having Mr. Binney, the other member of our party, with us. . . . The camp-fire kept off the mosquitoes and midges pretty well, but, before we left, the dogs had introduced some fleas, which were worse, as they got in under our clothing. . . . A swim in the lake commenced the exercises of the day; breakfast was at 8, and dinner at 6. We hunted and fished.

The deer-hunting was of two kinds: in the day-time, we went out in our boats, and scattered

to different points on the lake, to look out for the deer when he should take to the water. Then one of the guides took a hound into the woods and looked out for a fresh deer-track, and put him on it, and the dog followed it up till he found the deer, which he then chased perhaps for an hour or two, till the deer would take to the water to escape the dog, and attempt to swim across the lake. Then the boats would pursue him and shoot him while swimming. In the night a single boat would go, with a bright light in the bow, shaded from behind, so as to cast a strong light forward, but leave the boat, and the persons in it, in perfect darkness. In this way we would paddle up as softly as possible to the feeding-ground of the deer, where they come down in the night to feed on the lily-pads. One man paddles in the stern, and another with a gun sits just behind the light in the bow; and as the light noiselessly approaches the shore, the deer stand and gaze on it, seeming to be fascinated, until you can sometimes get within two rods of them. The slightest motion or noise makes them alarmed, and they are off in an instant. I went out three nights, staying till after midnight. From our camp such of the party as chose made excursions to other lakes and rivers. I went one afternoon to Big Tupper Lake, the head of which is twenty-seven miles from our camp, stayed over night, went night-hunting, and returned the next day, rowing sixteen miles on

our return in a drenching rain. The boats are made very light and very strong — about the size of Uncle Edward's. We saw eagles, herons, loons, kingfishers, and other birds, but no bears, panthers or wolves. Agassiz and Professor Wyman dissected and collected all manner of animals and plants. When I left, the number of deer killed and eaten was seven. My own exploits in that line were limited to a charge of buckshot put into the head of *one*. Our party when assembled in costume were a remarkable looking set, considering who they were, and I think any one of them would have been convicted of piracy on very slight evidence, especially Mr. Emerson. . . .

In 1868 Chief Justice Bigelow resigned his seat on the Supreme Bench of Massachusetts. His natural successor, as the ablest and most eminent lawyer on the bench, would have been Judge Hoar. Governor Bullock, however, nominated Judge Thomas. Judge Hoar felt strongly in the matter, and correspondence shows that, had Judge Thomas been confirmed, Judge Hoar would have retired from the bench. The nomination was rejected by the Council. But the Governor would not yield, and Judge Chapman was made Chief Justice. Ex-Governor Claflin, then of Governor Bullock's Council, said of Judge Hoar's non-appointment: "It was a sad day for the state, though I believe, in the end, his fame was made national by his rejection."

It was in November of that year that Judge Hoar celebrated Thanksgiving in Concord for the fiftieth time, having been out of his native town but twice on that day.

It was during the same year that Andrew Johnson was tried on articles of impeachment. At the close of the trial Mr. Evarts, who was one of his counsel during the trial, was appointed Attorney-General. The appointment called from Judge Hoar a letter from which the following passages are quoted.

CONCORD, *July* 18, 1868.

MY DEAR WILLIAM, — I am at home, with no special obstacle to doing anything that presents itself between now and September, as my summer work is ended; but I see by the papers that you have been confirmed as Attorney-General, and presume that it puts an end to your freedom for the present. . . .

But as to your being the Attorney-General under existing circumstances (though now that it is a fixed fact I hope you may find it pleasant and for your honor and profit), I do not feel sure enough about it to offer many congratulations, or indeed to know what to say.

Your defence of the President could not be avoided, when he applied to you to undertake it; and with a little regret that you should be mixed up with it, it was very gratifying to see you fill so conspicuous a place with such masterly ability.

x He evidently favored impeachment

Your position could be vindicated before angels and men. Every criminal has a right to the aid of counsel on his trial, and, if defended at all, to be ably defended. It is the right even of the thief and the counterfeiter. But when, after the acquittal, the grateful client invites his counsel to go into partnership with him, some other considerations seem to apply.

Well, prevent all the mischief you can, depend on the judgment and the sense of honor of yourself more than of your associates in the Cabinet, and God send you a good deliverance!

It may give Helen and Hetty the opportunity of seeing Washington under agreeable conditions next winter, at all events, on which I congratulate them, and am,

Faithfully yours,

E. R. Hoar.

The Hon. William M. Evarts.

His friendship with James Russell Lowell, which began years before, became increasingly more intimate, and it is interesting to trace its growth in the letters which passed between them.

Thus, on February 5, 1855, he writes: —

My dear Sir, — Whenever a guest is expected in our village, those of us who have a certain community of interest are apt to regard him as a sort of negotiable instrument, payable to (R. W. Emerson, for example) *or order*, and endorsed not only

without recourse (on his part) but without compunction (on ours). Consider yourself the victim of a relentless fate, and be assured, that, Mr. Emerson being absent, I have the authority of his wife for hoping that you will save yourself a half-mile walk or ride by stopping at my house, and for saying that you will not thereby be offending any hospitable expectations at the other end of the town.

I am at East Cambridge every day, and go home in the four o'clock train from Boston, in which I hope to meet you on Wednesday.

Very truly yours,

E. R. HOAR.

On July 31, 1861, he wrote the letter from which this passage is quoted: —

MY DEAR LOWELL, — . . . It would have given me great pleasure to join in any attention to Motley, especially, whose recent service to the country I think of a very high character. It seems of a kind very much like that which Gouverneur Morris rendered in the Revolution, — giving the nation the benefit of his private credit at a time of extreme need, — and should be marked with great honor. . . .

On September 2, 1864, was written the following: —

My dear James, — I do not wish you to forget to send me the extra verses of the new book of "Zek'el," — and therefore remind you that they are yet to arrive. By the way, I have not seen Mr. Biglow's poetic version of the Chicago platform, with the omitted resolutions necessary to its completeness. Perhaps the principal one which the telegraph failed to furnish may be gathered in substance from the others, namely, that if their candidate should be elected, after first releasing all imprisoned traitors, he should next repair to Richmond without an instant's delay, and presenting his back to Jeff Davis, humbly and respectfully request him to kick it. Perhaps it would gratify the party to have that done, even if he should not be elected, and I think it might be arranged. Apparently a great many would like to go with him, for the chance of making the expiation in their own persons, without trusting to mere vicarious humiliation through their representative and federal head. Fancy the sensations of a fellow that has not been kicked by a slaveholder for four years, when the toe of the boot first touches him, and he is sure that it is no delusion! What wonder that they are illuminating, and firing cannon, at the mere anticipation.

Faithfully yours,

E. R. Hoar.

Professor Lowell.

The following bears date June 2, 1865: —

My dear James, —. . . I had heard with grief unspeakable of your gout, and am glad you are so well out of it. In my opinion no man has a right to leave gout to his descendants without leaving a well-stocked cellar, particularly rich in old Madeira, to mitigate the infliction.

Qui sentit onus, sentire debet et commodum, — to reverse the law maxim —. . .

July 17, 1865, he writes: —

My dear James, — Do not think of such a thing. The Φ. B. K. have heard me till they are sick of it, and I will not try their patience further. I had intended to go into the dinner a few minutes, just to help fill up and hear your opening remarks, but that blessing will be denied me, unless I may be permitted to do it in silence.

Yet he went to the dinner and not "in silence." The marshal of the day tells this story of the occasion: —

"The orator of the day was a gentleman from another university, and after dinner Mr. Lowell, who presided, called upon him for a speech. In accordance with the time-honored custom of visiting scholars on such occasions, he began his response somewhat in this way: —

"'Alumni of Harvard College, it has been the object of my dearest ambition to find myself with you on this, your day of annual rejoicing. For who

is there so dull and unlettered that he has not heard of Harvard College — a college which boasts its Agassiz, and its Felton, and its Lowell, and its Longfellow, and its Gray.' Here the speaker began to hesitate, and the audience began to take a hand at prompting him, and from various quarters came the suggestion, 'Peirce,' 'Peirce.' He did not immediately catch the suggestion, but went on hesitatingly, ' and its Lovering, — and its Goodwin '— and then with a sudden jump — ' and its Peirce.' When, after a peroration, he sat down, Judge Hoar promptly rose to his feet and said, ' Mr. President, I hope the speaker will pardon me if I say that he reminds me somewhat of the man who was going into the woods to chop all day, and carried his dinner but forgot his axe.'

" It was a brilliant dinner, but this joke, almost alone of all that was said, has made a permanent lodgment in my memory."

From the same letter to Lowell comes this extract, which indicates how the friends spent their time in Concord : —

". . . So bring on your *Acres.*[1] (Is his Christian name Bob?) Mine are a little broader than they were when you last saw them ; and we can smoke the calumet at the river without resting our backs against one fence, and our feet against the other — as the way used to be."

[1] Refers to Charles Akers, a very charming man and an artist, who made a crayon portrait of Lowell.

The next letter acknowledges the receipt of a copy of the Commemoration Ode, one of a few especially printed for presentation to Mr. Lowell's friends : —

CONCORD, *Sept.* 10, 1865.

Many thanks for your beautiful book, which the mail brought punctually to hand, and which "No. 7" of your friends received with pride and pleasure.

I cannot compare the poem with all that has made you famous, because it has no relation to such things as "Biglow Papers," "Fable for Critics," and so on. But it has affected me more, in hearing and reading, than anything of yours of the serious kind ; and I think its tone lofty and noble, and the execution worthy of the theme.

What an occasion that Commemoration was ! Why ! It was the whole war concentrated, and you have embalmed its essence and its flavor forever.

I don't believe there ever was such a time to live in as our lifetime, since the world was made ; and I consider falling in with you as one of the chief felicities of existence, which, if I should n't go to Heaven (as is much to be doubted), will give great help in striking a comfortable balance of the total result of my creation.

I still think the best line in the poem is

That is best blood which hath most iron in 't,

but there are whole strophes that I have read

over many times with delight, and should be glad to hear you read again. . . .

Lowell wrote thus of his friend in his rustic verse apropos of Concord: —

I know the village, though; was sent there once
A-schoolin', 'cause to home I played the dunce;
An' I've ben sence a-visitin' the Jedge,
Whose garding whispers with the river's edge,
Where I've sot mornin's lazy as the bream,
Whose on'y business is to head up-stream,
(We call 'em punkin-seeds,) or else in chat
Along 'th the Jedge, who covers with his hat
More wit an' gumption an' shrewd Yankee sense
Than there is mosses on an ole stone fence.

Lowell dedicated his second series of "Biglow Papers," in which these lines occur, "To E. R. Hoar": "A very fit thing it seems to me," he said, "for of all my friends he is the most genuine Yankee."

This compliment the Judge thus acknowledged: —

CONCORD, *November* 3, 1866.

MY DEAR JAMES, — I desire reverently to express my profound sense of obligation. I am handed down to posterity. Immortality is secure. An *attaché* to some splendid embassy, a poor plodding pedestrian suddenly and unexpectedly receiving a "lift" that takes him to his journey's end, a donation visit to a country minister — comparisons fail me!

I procured one of the earliest copies of the second series of the "Biglow Papers" from Fields, and sat down to read it. At the touching dedication I paused; not, however, till I had read it through. Then I read it again — it impressed me. Then again — it impressed me still more. Then I thought I would shew it to my wife — she smiled, but added nothing by way of comment or interpretation.

I have read the book since; first the new parts, with new admiration, though I confess to not making out "Dupleveorum" without assistance; and then the parts which I had seen before, and whose command of smiles and tears remains unimpaired by familiarity.

But altogether, and including the model index, nothing, after all, impressing me like the dedication. How much it leaves to the imagination!

But, in whatever sense it may be taken, the fact is there — I am on board — luggage marked — and future generations will hear of me without the expense of a tombstone. The measure of my earthly ambition is satisfied, and why should I live longer?

Do not trouble yourself to send me a copy, except the long paper, in due season. It has reached me, as you perceive from what I have said above. It came as directed.

And now, my beloved, I take it you have no longer any doubt of the wisdom of your conclu-

sion to work the vein a second time. It is a rich and abundant success, beside your knowing that it is, like Audrey, "mine own." . . .

With the most affectionate regards,

E. R. HOAR.

The next is characteristic: —

BOSTON, *Nov.* 19, 1866.

MY DEAR JAMES, — I take it for granted that you recognize the great etymological truth that "dog-goned" is a mere Virginian euphemism for G—d d—d, in the vernacular. But what I wish to call your attention to is the derivation of "chores" — or preferably and before modern corruption "chars" — from the Latin "*quid facere*," i. e., things to do. It came into English at about the time of many Spanish words, and by the same route with *punctilio*, *bravado*, and the like. The Spanish is "*que hacer*"; and the Spaniard habitually makes a noun of the phrase, and says that he must go and do, or attend to, his "*que-haceres*," which he rapidly pronounces very much like "char-es."

My brother Edward (who, like a cat, knows more than he usually tells) says the Spanish Californians constantly and habitually use the phrase, and that it was scarcely distinguishable by the ear from "char-es" — that he recognized the word chores as soon as he heard it.

The following letter refers to the dedication of the Soldiers' Monument at Concord, June 24, 1867 : —

"I have sent you the Monument pamphlet ; and if you take the trouble to read my report, I must beg, as I said the other day, that you will remember that the style in which one may talk to the mourners at a funeral is not to be very closely criticised.

"It took all my courage to venture to appear on the same occasion with Mr. Emerson, but there was no help for it. Trusting that the sound would help the sense, I went ahead ; and it did.

"His address is a very pretty little contribution to the story of the war."

The following doubtless refers to something said in connection with the nomination of Judge Thomas, and a suggestion that it might lead to Judge Hoar's election as governor of Massachusetts : —

". . . To the letter of January 12, I can only add my fervent Amen to all its anathemas, and confess my deep pride and delight at its affectionateness. But when I think of the real subject of its discussion, it almost 'gars me greet' to think what a dear, royal, deluded old boy you are, and what an ornamental, embellishing, mistaken imagination you have the capacity to indulge in.

"I have put a stop to all that nonsense about governor, which really began to assume a certain

resemblance to reality, and will tell you about it the next time we foregather, when, with Dryden off your hands, and your notions thereupon transferred to my receptive and gratified head, I hope to find you lazily and deliberately taking your share of the rest which remains for the people of God. . . ."

At Commencement this year (1868) he received from Harvard the degree of LL.D., which Williams College had given him seven years before.

This is his reply to an invitation to celebrate Lowell's fiftieth birthday : —

CONCORD, *Feb.* 20, 1869.

. . . I am improving a little to-day, but visiting Cambridge on Monday will be out of the question. So fill my place with somebody better. I am very sorry, but you may rely on my joining in the celebration of your 100th, by which time we may hope to have got over these infantile diseases, and to have settled down into a good steady pace — for life.

Sherman responds cordially to your salutation.

I believe I have told you this story of him, but it is so much to the purpose of what is in my mind at this moment that I must repeat it. He was listening, with flushed face and sparkling eyes, to a story of a young man in Vermont who went across a long railroad bridge over the Connecticut, just before it was swept away by the freshet,

and with all the chances that it would not hold together till he could get over, for the purpose of giving warning to an express train that was coming on in the darkness; and at the end of the story S. asked, "Was that since I was born?" On being told that it was, and only a year or two before, he drew a long breath, and exclaimed, "Oh! I'm glad *I* was alive when he did *that!*"

Which is what I am thinking of the fruits of those fifty years — and so, God bless you.

CHAPTER V

THE ATTORNEY-GENERALSHIP

General Grant was inaugurated as President of the United States on March 4, 1869. His experience of their interference during the Civil War had inspired him with a lively dislike of politicians, and he determined to be independent of them. He chose his Cabinet, therefore, without consulting the leaders of the Republican party, selecting them not on account of their political prominence, but because he liked them personally, or because he had found them friendly or useful. He named as Secretary of State Elihu B. Washburne, of Illinois; as Secretary of the Treasury, Alexander T. Stewart, of New York; as Secretary of War, John A. Rawlins; as Secretary of the Navy, Adolph E. Borie, of Philadelphia; as Secretary of the Interior, Jacob D. Cox, of Ohio; as Postmaster-General, John A. J. Creswell, of Maryland, and as Attorney-General, E. R. Hoar, of Massachusetts. Washburne had been his stanch supporter from a very early day in his career. Rawlins had been his chief of staff, and was his intimate friend. Cox had been a distinguished officer in the western campaigns of the Civil War. It was suggested at the time that Stewart and Borie

had been liberal contributors to the funds raised in New York and Philadelphia to purchase houses for him; but however that may be, both were prominent merchants, and had been friendly to him.

The circumstances which led to Judge Hoar's selection are stated thus. In forming his Cabinet, the new President had offered the portfolio of the Interior to George S. Boutwell, who declined it; but when he did so the President suggested that he might appoint an Attorney-General from Massachusetts. In reply to this suggestion Boutwell named Judge Hoar, and advised his appointment. Senator Hoar says that the same suggestion from another eminent Massachusetts man who was not in Congress had more weight. This gentleman suggested Judge Clifford, which did not interest General Grant, and then Judge Hoar. "The President replied with great earnestness and emphasis, 'I know all about Judge Hoar!' He had met him, I think, on two occasions, and had sat next him at dinner, and had a very hearty and cordial, though brief, acquaintance with him. The result was that Judge Hoar's name was sent in."

It was at once discovered that Mr. Stewart was ineligible to the office for which he had been named, under the statute of 1789, which provided that the Secretary of the Treasury should not "directly or indirectly be concerned in carrying on the business of trade or commerce." Mr. Sherman of Ohio, on Saturday, March 6, offered in the

Senate a bill to repeal this statute and asked unanimous consent to its passage. Senator Sumner objected, and on his objection the bill went over and was never moved again, it being at once apparent that public sentiment both in and out of Congress was opposed to it. The appointment of Mr. Boutwell in place of Mr. Stewart was then considered, but it was objected that, if this were done, there would be two Cabinet officers from the same state, which for various reasons seemed undesirable. On Sunday, the 7th, Mr. Washburne called on Senator Sumner, pointed out the difficulty, and urged Senator Sumner to ask Judge Hoar to decline the office of Attorney-General. The Senator replied that, as he had not been consulted in regard to making the appointment, he must decline to interfere. Senator Hoar, who had entered the House of Representatives on March 4, tells his experience in these words: —

"In the evening after the Cabinet had been announced, Mr. William B. Washburn, afterward governor, called upon me at my room. Mr. Washburn and I were not then intimate, although we afterward became close friends. He said he had been requested by the [Massachusetts] delegation to tell me that they had earnestly hoped that Mr. Boutwell might have a place in the Cabinet, and that, although they had great regard for Judge Hoar, they hoped that some arrangement might still be made which would bring about the selection

of Mr. Boutwell. I told Mr. Washburn that I was quite sure that the appointment of Judge Hoar would be a surprise to him, as it was to me, and that I thought it quite doubtful whether he would wish to leave his place on the bench for a seat in the Cabinet, but I could not speak for him or judge for him. I telegraphed at once to Judge Hoar not to commit himself in any way until he reached Washington and could see me."

A telegram was sent to the Judge on Monday, requesting him to refuse the office of Attorney-General, to which he replied asking that nothing be done until he could reach Washington and see the President. The nomination had been a complete surprise to him, and he had no intimation of it until it was announced on the bulletin boards of the Boston newspapers.

Senator Hoar continues his narrative thus: —

"I met him at the depot, told him of the communication of the Massachusetts delegation and that, especially considering President Johnson's quarrel with Congress, it seemed quite important that General Grant, who had no experience whatever in political life, should have some person among his counsellors who had the full confidence of the leaders in Congress. The Judge strongly appreciated that view. When he called upon President Grant his first conversation consisted in urging upon him very strongly the selection of Governor Boutwell. He supposed then that it

would be quite unlikely that the President would take two men from the same state, and supposed that selection would require his own refusal of the offer of the office of Attorney-General. President Grant said that he would think it over and not decide the question that day. The next morning he sent for the Judge and said: 'Judge, I think I would like to have you take the oath of office.' He handed the Judge his commission. The Judge looked at it and saw it was not signed. He said, 'I think perhaps it would be better if you were to sign it.' Grant laughed and complied with the suggestion.

"Judge Hoar's first official duty was to give an opinion upon the question whether Mr. Stewart, who had been nominated for Secretary of the Treasury, could under the law undertake the office. Mr. Stewart proposed to make some conveyance of his business interest, by which he should part with his legal title to it while he held the office of Secretary of the Treasury, and come back to it again after his term ended. But the Attorney-General advised the President that that was impracticable, and the result was the withdrawal of Mr. Stewart's name and the appointment of Mr. Boutwell a day or two afterward."

The Judge's feelings in regard to his own appointment may be gathered from his letters. On hearing of the nomination he wrote to his brother in Washington:—

"I am astonished! Unutterably! I do not know what to do, and hardly what to think. The poor man in the Arabian Nights who was taken away in his sleep and found himself in the Caliph's palace in the morning with a complete change of identity, and deprived of his wife and children, is the only parallel case that occurs to me.

"We are in the midst of our March Term, with some heavy cases reserved by me just reached, and I *could not* in justice to suitors or my associates leave to-day. It seems to me that respect to General Grant, and to the high compliment involved in such an unexpected appointment from him, undoubtedly require that I should go to Washington immediately, and, as your telegram suggests, there decide what duty requires to be done. . . .

"I shall reach Washington by six or seven o'clock on Tuesday, when I will see you and Mr. Evarts, and try to learn what it all means, but, it being the middle of the March Term, must wait a day in justice to suitors and my associates."

He adds: "Caroline will suspend any proceedings for divorce till I have been to Washington and concluded what to do — and the selectmen of Concord will not apply to the judge of probate for a guardianship as a spendthrift for a week or two, if I will agree to accept notice at Washington, in case I do not return within that time. My creditors have not recovered sufficiently from their astonishment to get together."

Apropos of these remarks on the economic side of the question, the salary of the Attorney-General was then perhaps one third larger than the salary Judge Hoar was receiving as a justice of the Supreme Court of Massachusetts; but living in Washington as a member of the Cabinet was expensive, and the Concord home for the family must also be maintained. In earlier days the Attorney-Generalship brought with it a large practice in the Supreme Court at Washington, but during the war and since, the Attorney-General had been too much burdened with public work to do anything for himself.

It was a time when the public was giving houses to men who had served their country well, like Grant and Sherman, and it was suggested that some of Judge Hoar's friends in Massachusetts might help him by giving him a house in Washington. The following letter of Senator Hoar to Hon. P. W. Chandler, written on March 13, 1869, is interesting in this connection.

"I have received within a few minutes your letter concerning the proposed offer to provide a house for Judge Hoar. I have not the slightest doubt what his reply to such an offer would be, if made to him. But as I think his answer to such a proposal should be the result of his own determination and not mine, I shall say nothing about it to him, and must decline being the medium of any communication with him upon the subject."

It would appear that the proposal was, not unnaturally, abandoned.

A letter which he wrote to Richard H. Dana after the interview with General Grant tells what happened on his arrival in Washington.

"I appeared in Washington as independent of all political schemes and persons, as I was in the Court House in Boston. . . . I went to see the President, had an interview of an hour, most of it spent, on my part, in urging reasons why I should not accept his offer, and when I left him I went to bed as clear of all earthly responsibility as a man well could be. The telegram of Monday was sent to me, by his consent indeed, but without his approbation. Everything since has been fabrication, hope or conjecture, which the newspapers have circulated concerning me.

"I cannot tell you what was said to me by Grant, but I have been told by others what he has since said to them, and you would not be distressed on my account to hear it. I seemed to impress him as a discovery."

On March 10, Judge Hoar resigned his seat on the Supreme Bench of Massachusetts.

Meantime, in the quiet village, five hundred miles away, where, in those days, everybody knew everybody, the news had spread from the telegraph office to the Main Street and on the Mill Dam, that her foremost citizen had been called to be one of

the guides and guardians of the Republic. One who happened to be "down town" just then reported that every face wore a smile of proud satisfaction at the Judge's national honor, which, as they recalled Governor Bullock's recent refusal to appoint him Chief Justice, changed to a "girn."

One of the Judge's family, writing to him in 1869, mentions that she had been to call on two interesting remains of eighteenth-century maidenhood, on the road to Carlisle. One of these ancient crones had asked, "What made Mr. Hoar go? We don't want our best man to go off there! I hope he don't like."

But at the National Capitol "Judge Hoar's appointment was received . . . with great approbation, and the Massachusetts delegation both in Senate and House, with but one or two exceptions in the latter, were earnest and hearty in their eulogies," [1] so Senator Hoar wrote to his sister-in-law in Concord on March 14; and he adds, after alluding to Governor Boutwell's share in influencing the appointment:—

"Rockwood, in his turn, was largely instrumental in removing from the President's mind the objections which existed to Boutwell. No suggestion that either should withdraw has ever been made by our delegation or approved by it. President Grant expressed his satisfaction with his selection of Rockwood in a way quite unusual

[1] General Butler was then in the House.

with him, saying to Mr. Conkling of New York, 'Judge Hoar is magnificent.' Unless some unforeseen change should take place, Rockwood will remain in the Cabinet as long as he pleases."

Yet later in his "Autobiography," Mr. Hoar admits that there were grave considerations against having two members of the Cabinet from Massachusetts, especially then, when there was great jealousy of that state in the Republican party. In the Senate, Sumner was at the head of the Committee on Foreign Relations, Wilson was chairman of the Committee on Military Affairs; and, in the House, Banks, Butler, Washburn, Dawes, Hooper, and Buffington were respectively at the head of important committees. "So it was well understood on both sides that Judge Hoar's continuance in office was very likely not to be permanent, and that he considered the President at liberty to fill his place, whenever it could conveniently be done. There was no Cabinet officer at all from the South." Creswell, the Postmaster-General, came from a Border state.

The Judge, writing from Washington to Lowell, thanking him for his "hurrah" of congratulation, fears that his appointment may do more harm than good by blocking the way for good men of Massachusetts.

"I have already expressed," he says, "the opinion that you ought to go as minister to Spain or Austria (the latter, of course, only in case Motley

goes to London) and that either Boutwell or I, or both of us, if necessary, ought to quit the Cabinet, if it stood in the way of such a public benefaction. But I feel very much like an intruder, and can only say that, while I am about, the President shall have as much honest counsel, given with such directness and earnestness as the opportunity may allow, as I am able to furnish, and that, whenever my duty in that behalf ceases, no one can be more glad of it than myself."

Lowell's reply should be preserved for the light which it throws upon Judge Hoar as well as on his own character.

ELMWOOD, 29th *March*, 1869.

MY DEAR JUDGE, — I did not look for any answer to my letter, knowing how overwhelmed you must be with business. But I can't help answering *your* letter, knowing that a whiff of Massachusetts must be a cordial to you where you are.

If you could have heard the talk at Club on Saturday, you would have been pleased. Did n't you notice any burning of the ears between three and four o'clock on that day? Everybody was warm about you, and not merely that, but (what I liked better) everybody was glad of the gain the country has made in you. It was all very sweet to me you may be sure, but it would have pleased you most (as it did me) to hear Emerson, whose good word about a man's character is like

being knighted on the field of battle. It is so, at least, to you and me, who know him. Generally, you know, we are apt to congratulate a man on getting an office, but in this case we all wished the office joy of getting the man. In short, it was just what you deserved and what an honest man may fairly like to hear of.

Never dream of quitting your place. A man with a head and heart that you have, who knows the good and evil of politics, is just what the President wants. He has an eye for men, and will not part with you. You, who might have had any place that Massachusetts had to give, either state or national, and who chose rather the line of duty than that of ambition, are in your right place, whoever else is. We are apt to say that honor seeks out such men, and so she does, but promotion is not so quick-eyed and finds them less seldom. I am saying nothing new — for you know the opinion I have always held of your aptitude for public service — nor am I speaking out of gratitude, though the tears came into my eyes when I read your generous words.

I know that some of my friends had talked of me for some place abroad, but I thought it had blown over long ago. I need not say I should like some small place, like Switzerland, which I could afford. Spain, of course, would be delicious — but I have no "claims" and would not stand in anybody's way, least of all in Motley's. Your letter

the head — ayes — but how about the heart that yearned for the death of Judy Garey?

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startled me. I had no notion I had been spoken of anywhere but here, and a mission could hardly please me more than your speaking of me so warmly, nor indeed would be worth so much. I shall communicate your letter to none but Fanny, and a secret confided to her is dropped into a well. I thank you as old friendship only can.

Don't laugh — but the office I am most interested about is our Post Office in Old Cambridge. The present incumbent *ought* to be kept in and if you can properly say a word to Mr. Creswell, I hope you will. . . . He is not an active politician (though a very active postmaster) and a man with a family dependent on him has an excuse for wishing to keep his place, if he can do so without loss of honor. You see what a log-roller I am become.

Again I say, do not answer this. I understand perfectly what you have on your hands. I shall write to you now and then with a little Club news. In what I said about Club opinion at the beginning of my letter, I did not mean to imply that such feelings were confined to your personal friends. I gather but one sentiment from all quarters, as honorable to you as it is deserved. It is but fair that you should know it. You need backing less than most men — but you ought to be pleased.

Always lovingly yours, J. R. L.

His brother tells this anecdote of the Judge at his first Cabinet meeting.

"The President brought up the case of a man, whom he said he proposed to appoint Chief Justice of one of the territories. He said he was a man for whom he had great sympathy, who had lost both legs in battle. There was an entire silence about the board, which was at last broken by the Attorney-General as follows: 'Mr. President, it seems to me that mere absence of legs is not a sufficient qualification for a judicial office.' The other gentlemen at the table thought the observation rather audacious. But the President laughed and said he would consider the matter further. But the man was not appointed."

Chief Justice Field thus speaks of the tasks that came upon the Judge, and their performance: —

"In the administration of the office of Attorney-General of the United States, he took exclusive charge of the political business of the office, and he had to deal with many matters of grave importance. Our relations with Great Britain, especially, were in an unsatisfactory condition, and although the burden of the negotiations belonged, under the President, to the Secretary of State, yet Judge Hoar strongly supported the Secretary. It was in consequence of this, as well as of the confidence which the President had in his character, ability and good judgment, that (later) caused his appointment as one of the commissioners to negotiate the treaty of Washington."

Mrs. Hoar could be little at Washington, but

had to take charge of the Concord home. The Judge however had a new pleasure, in finding his eldest boy, now at his side, a helper and companion. He had studied law, on leaving college, in his uncle's office; then served his kinsman, Hon. William M. Evarts, the Attorney-General under President Johnson, as pardon clerk; and, as such, remained when his father was called into the Cabinet.

The latter in writing to his wife in July, 1869, from the heated capitol said:—

"I am happy to think that that vivacious boy Sam has been enjoying the sea-breezes for the past two days, and will have cheered you all up by the time this letter reaches you. He has been a great comfort to me, and it seems already lonesome without him."

The Administration was at first busied with questions of appointment, and the letters already quoted show something of Judge Hoar's feeling in regard to them. President Johnson, as a result of his long contest with Congress, had left his successor a troublesome legacy of unsettled questions, and foremost among these was the dispute with England growing out of the claim made by the United States, that England should pay for the injury done us by the *Alabama* and the other Confederate privateers. Mr. Reverdy Johnson, still our minister to England, had negotiated a treaty with Lord Clarendon for the settlement of the

controversy; but on April 13, 1869, Senator Sumner made a speech against it, and it was rejected by a unanimous vote of the Senate. Mr. Sumner took the ground that the treaty was entirely inadequate since it provided only for the adjustment of individual claims and left untouched the great wrong done to the United States as a nation. He claimed that our real grievance lay in the concession of ocean belligerency to the Confederacy and the consequent prolongation of the war. He outlined a national claim of enormous magnitude, and, as England was very unlikely to recognize such a claim, the situation became delicate. Wise men on both sides of the water interested themselves in trying to find a solution of the difficulty, and the circumstances gave Judge Hoar a great opportunity. His position is suggested by the following extract from a letter to John M. Forbes, written June 25, 1869 :—

"I did not agree with Sumner on the Tenure-of-Office bill, and fear he does not regard me as absolutely reflecting the full light of his Alabama Claims as much as I ought to, but our personal relations are and always have been most cordial, and my respect and regard for him are very strong."

He had long held Mr. Sumner in high honor and personal esteem, and they were in close political sympathy, though they did not always agree as to details or methods. He therefore, as the per-

son who possessed at once the confidence of the Administration and of Sumner, who in this matter at least represented the Senate, was in a position to exercise great influence, and he acted in cordial coöperation with Secretary Fish, who had succeeded Mr. Washburne in the State Department. On this subject he wrote to R. H. Dana on May 10: —

"Be assured that this Administration . . . *knows some things.* Do not be in the least disturbed. Strictly between ourselves, if Sumner keeps his temper, you will have no occasion to lose yours."

John Lothrop Motley was appointed by the new Administration to succeed Reverdy Johnson, and after the rejection of the Johnson-Clarendon Treaty the discussion of the question between the two governments was for a while abandoned; but Secretary Fish's instructions to Mr. Motley bearing date May 15, 1869, and the later instructions to the same minister of September 25, 1869, stated the position of this country in accordance with Mr. Sumner's speech. Judge Hoar was doubtless consulted in regard to them, but the responsibility was on Mr. Fish, who conferred with Mr. Sumner and Caleb Cushing, and it does not appear that Judge Hoar took any prominent part in the matter.

Another question of international interest, however, engaged his attention, and in the determination of this he exercised an important influence.

An insurrection in Cuba was in active progress when General Grant was inaugurated, and General Rawlins, the Secretary of War and the President's intimate friend and trusted adviser, was anxious to intervene in behalf of the insurgents. He urged as a first step that the United States should recognize them as belligerents, taking the course in regard to them which England had taken in recognizing the belligerency of the Confederate States. As this was one of the principal grounds upon which our government rested its claims against England, it was very important that the United States should not do exactly what it blamed England for doing. General Grant was disposed to take the advice of General Rawlins, and doubtless on general grounds favored the policy of annexing West Indian territory. Mr. Sumner strongly opposed the recognition of Cuban belligerency on the ground that it was not justified by international law, and believed, as he wrote to Caleb Cushing on July 19, 1869, that "The best chance for Cuba is through a kindly policy with Spain. With a thoroughly upright system we can obtain all we desire."[1]

Judge Hoar strongly supported Mr. Sumner and aided Secretary Fish in preventing the proposed recognition. Sumner, in a letter to Motley of June 29, 1869, said: "Hoar, who is now here, tells me that at the last Cabinet meeting he went into the

[1] Pierce's *Life of Sumner*, vol. iv, p. 403.

belligerency question, and against the concession to the Cubans"; [1] and the Judge himself, on June 28, wrote to Sumner: —

"You would make no apology for your Cuban sermon if you knew how zealous a member of the same church you were addressing. My wish and first impulse was to inclose your note to the President, but I forbore for two reasons: (1) I had not your permission to do so; and (2) I was afraid he would suspect you of plagiarism, as he must be reasonably familiar with that train of remark, if he keeps up any recollection of my discourses. I shall not be back in Washington till next Monday, and I do not think that anything can happen before then; but there is need of all the steadiness that anybody can contribute." [2]

The opposition prevailed and Cuba was not recognized, remaining to be — as any oppressed people, be it a nation, a race, or a class, must always be — a prolific source of future trouble.

Judge Hoar, however, had difficulties more peculiarly his own. Congress had distrusted President Johnson so entirely that an act had been passed, in 1866, taking from the President the power of appointing any new judge of the Supreme Court until the number of judges, then ten, should be reduced to seven, and providing that thereafter the court should consist of seven members. When General Grant became President there were eight

[1] Pierce's *Life of Sumner*, vol. iv, p. 403. [2] *Ibid.*

judges on the bench, and an act passed during the spring session of 1869 fixed the number of the judges at nine, and also created a new judgeship in each Federal circuit. The duty therefore devolved upon the Attorney-General of advising the President as to the choice of one justice of the Supreme Court, and all the new circuit judges, — a duty in which the Senate was zealous to render its assistance. It was essential that the judges in the Southern circuit should be both good lawyers and men who had been loyal during the Civil War, for it seemed unsafe, while the feelings created by that struggle were still fresh, to trust the decision of important questions growing out of the war to men who were not in cordial sympathy with the government. Judge Hoar afterward, in speaking of his difficulties, said, "My situation was somewhat like that of the parish committee who went to a divinity school in search of a minister, and were told by the president that the students fell readily into three classes, those who had talents without piety, those who had piety without talents, and those who had neither."

His colleague in the Cabinet, Secretary Jacob D. Cox of Ohio, thus describes his attitude in this matter: —

"The passage of the new judiciary act called for the nomination of the whole class of circuit judges, and the Attorney-General's heart was set on having the new places filled by men who would

honor the bench in the performance of those judicial duties, subordinate only to those of the Supreme Court. He could not always make his judgment of men potent, but the President stood by him so well, on the whole, that the judicial nominations sent to the Senate that winter are proof enough of his character and his courage."

These final tests of men, character and fitness, did not please the senators, who felt that their recommendations of candidates were entitled to the first consideration. Nearly every senator had a candidate of his own for the Circuit Court, but in almost every instance the President took the Attorney-General's advice. "In one of the two cases where he did not," says Senator Hoar, "he was compelled by the sentiment of the profession and the public to withdraw the senator's candidate after he had been nominated."

Thus friction began and rapidly increased. Such a man in such a place was intolerable to politicians with friends to reward and influence to maintain, but his position was impregnable to direct assault; he was the President's authorized adviser on these points, and evidently strong in honesty. Unhappily the Judge's manner in discharging his duty was not engaging. He had the plain speech and trying sincerity of latitude 42° N. in an extreme degree, and it proved hard to bear at Washington. Yet he was but half conscious of it. One of his fellow members of the Cabinet said, "When deal-

ing with injustice or dishonesty, the edge of his humorous sarcasm cut like a knife, and the doer of the wrong had no refuge from self-contempt but in wrath and in hatred. . . ." Nearly every complaint of acerbity in his temper arose directly from discomfited attempts to make judges or district attorneys of disreputable or unfit men. With spoilsmen of this class he was apt to use plain English. No doubt he had thus made a considerable number of influential enemies by the close of 1869.

"These were individuals, but soon the attitude adopted by the Attorney-General as President's adviser was taken as a wholesale affront to the upper house of Congress by most of its members. The Senate has been, and at this period was becoming more than ever jealous of its rights and its prerogatives." Senator Zachariah Chandler of Michigan introduced a resolution in the Senate requiring the Attorney-General to report the condition of certain cases between the United States and various defendants. The resolution was adopted and sent to the Attorney-General. He declined to comply with it; reminded the Senate that he was not a clerk for them, but responsible only to the President, and suggested that the Senate apply to the Executive. Thereupon Senator Chandler and those who voted with him were angry, and refused to have communication with the President through the Attorney-General's office. The Judge, in speak-

ing of this action to a friend, showed some amused satisfaction at having caught the senators in this mistake about their right to demand information of him. Technically and morally the Attorney-General was proof against attack, but his course naturally produced irritation and impaired his just influence. The obvious tactical move was to stir the feeling increasingly prevalent in the delegations from other states, — too much Massachusetts in the Cabinet. The Judge's generous readiness not to embarrass the Administration was known. Grant felt the pressure, but liked the Judge, saw his strength and wisdom and felt, too, the moral tonic which he had always needed, and which until now, his near friend and "his conscience" in camp and at the White House, General John A. Rawlins, had supplied. This brave man had died, and now at the President's elbow as private secretary and old crony, was General Orville E. Babcock, an astute man of little principle, but who had Grant's confidence and regard.

The vacancy on the Supreme Bench, created by the act to which reference has just been made, offered the President a way out of his difficulties, and in September 23, 1869, he asked Judge Hoar to accept the vacant seat. In this way he could pay the Judge a high compliment, make an eminently proper appointment to the Supreme Bench, and relieve himself from embarrassment. Judge Hoar did not at once accept this offer, and a letter

to his wife of October 19 states the reasons for his hesitation.

"This question must be soon decided, and gives me a great deal of thought. In the first place the opportunity is not one that may occur oftener than once in a lifetime. The salary is now $6,000, about what it was in Massachusetts, considering the difference in expense. I think I could get along with our expenses through this year, which seems likely to be the most expensive, with the start I have now, and then I am very confident that the salaries will soon be raised. Then I have not yet had any private business, and unless I do I can lay up nothing. I did have one private client's offer to-night in a large and profitable case, but I was obliged to decline it, because it involved going to New York to argue a question before the Circuit Judge, and I cannot leave Washington while the court is in session. I like being Attorney-General very well, but whenever I leave the office I have only the prospect of returning to practise at the bar, which does not look attractive or pleasant at my time of life; and if I hold on through Grant's administration, I should have lost the chance of money-making for a long time, and should be rather too old to begin life so much anew in the rough work of the bar. Then I should have no prospect before me if I did not succeed in laying up money enough for our wants in later life, if I should live to be old. On the other hand,

the salary of a judge, whatever it may be, will last for life, and with the right to give up work at seventy, if I should reach the age. To Sam, and I dare say to Amelia, who see me mainly when at leisure or at rest, I may seem younger and more full of resources than I feel myself to be, but my life and health have been such that I know I am older than most men at my age. You will see from all this that my present inclination of mind is rather to accept the President's offer. Yet I almost feel that it is ignominious to retire from active duty in the public service, and I should not want to make a determination which involves such a permanent change in our mode of life without your full approbation. . . .

"I want you to think of it and let me know."

The following passage from a letter of November 20, 1869, written by his friend and former partner Horace Gray, then on the Supreme Bench of Massachusetts, is interesting: —

"Doubt prevails here whether you are to go upon the Supreme Bench, and most among those who should know best. If you ever mean to do so, the temptation must be strong to do it now, when good work is so much needed, not only on the great constitutional questions, but on bankruptcy, commercial and maritime law, and many other branches on which some of their eminences are hardly experts. It would be unpleasant in dispelling the vision of our court's ever regaining its

natural head. Yet I do not see how any one judicially inclined can hesitate upon such a question. The Supreme Court has always seemed to me the greatest judgment seat in the world, and the immediate reconstruction of the Southwest must be a most attractive mission.

"The whole law upon this point, however, as on many others, is well summed up in that favorite authority of mine, the Body of Liberties: 'The general court hath libertie and authoritie to send out any member of the Commonwealth, of what qualitie, condition or office whatsoever, into foreine parts about any publiqe menage or negotiation: Provided the party sent be acquainted with the affaire he goeth about and be willing to undertake the service.' And you know, as I do not, the sense of power and public usefulness of a driver of the car of state, as compared with that of a passenger on ever so high a bench inside. What a pity it is that *pro hac vice* the Attorney-General cannot lay down the law to the court like a judge advocate."

An opposing view is found in a letter from his classmate and friend, Charles W. Storey, written on December 21:—

"I am only sorry you were nominated. It seems to me much better for the country, for you, and for the President, that you should remain where you are, than that you should accept even the great place of Justice of the Supreme Court. To

furnish the ideas on which the Executive must act at this juncture in the matter of reconstruction is more important, in my view, than to decide deliberately on the wisdom of it all afterwards, and of course requires more brains. . . . I am surprised the President should have thought of letting you go. To have a man about him who understands politics and politicians, without being himself a politician and, as such, obliged to worship his own tail of smaller politicians, must be a luxury to him, especially as the man smokes."

He finally decided to accept the appointment, and, on December 14, his nomination was sent to the Senate. The nomination at once encountered opposition in the Senate, and a personal hostility developed for which the Administration was not prepared. The following letter was written by the Judge to his wife a few days later : —

WASHINGTON, *Dec.* 19, 1869.

I hope to see you this week — that 's the great fact in human existence. But aside from that cheerful and delightful outlook, I am not having a very agreeable time just at present ; the Senate does not act on my nomination, and there is said to be some prospect that they will not confirm it. This I do not think probable, but, as they adjourn for a fortnight on Wednesday next, they may leave it undecided, which leaves me in a condition rather *afloat*, and reminding me considerably of

my sensations at the time of the Chief Justice business two years ago, — or perhaps still more of Judge Thomas's, — because then the newspapers were pitching in on my side, and now my friends the newspaper correspondents are taking their little revenges for my persistent omission to recognize their existence heretofore. There is, besides, a slight controversy which the committee are trying to get up with the President, mainly, I think, with reference to me, which I have to take my share of. So that things are not altogether lovely. On the other hand, I am pretty well (intend to leave off smoking!),[1] and have many active and excellent friends. So life is not exactly a burden, but if things work so that I cannot spend the next month at home, I shall be disgusted.

On December 22, the nomination came up for action in the Senate and the following letters show what happened, and how the Senate's act was regarded by the Administration.

WASHINGTON, *Dec.* 25, 1869.

HON. E. R. HOAR,

DEAR SIR, — I write simply to say that your friends for more than four hours battled for you, that all was said and done that could be. When it was clearly seen that a majority had determined

[1] The Judge was very much given to leaving off smoking and then resuming it, until his doctor said to him: "Judge, if you will either smoke or not smoke, I can prescribe for you, but not otherwise."

on a vote of rejection, we struggled for more than two hours against coming to a vote, before we secured an adjournment. Never have I seen such action in the Senate. Certain senators seemed determined on a vote of rejection. They claimed to have a majority of fifteen, and I think they thought they would not only defeat your nomination, but by so doing could drive you from the Cabinet. That was the purpose of some engaged in the proceedings against you.

They have a majority in the Senate that cannot be overcome. But you have not only the confidence of the President, but his personal regard, and I hope you will not let these senators drive you from the position you hold in the government. The President is for you, our good old state is for you, and you had a true minority in the Senate who will stand by you.

Yours truly

HENRY WILSON.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, 23 *Dec.*, 1869.

MY DEAR JUDGE, — I have just come from the President, with whom I have been discussing the action of the Senate last night upon your nomination, and the course proper for both him and you to pursue. Robeson and Belknap met me there, and I want first of all to assure you that a common indignation fired us all. Field came in on a

matter of business, and I asked him to telegraph you to maintain a "masterly inactivity" until you should hear from us. We feared that in your first flush of feeling you might commit yourself to some cause or course of action which you would not follow, if fully advised of the facts, and of the feelings of the President and your associates in the Cabinet.

First, as to the facts: The very men who wanted the President to "lump" you and Stanton's nomination, were the leaders in a most persistent determination to force a rejection. They counted on the Democrats of course, and with reason. To these they added all the Southern senators except Warner, on the plea that the South should claim the appointment. A few of the Northern Republicans then sufficed to make a majority. Trumbull seems to have supported you and to have dissented from the remainder of his committee. This was a gratifying surprise to me. The opposition, it is said, was evidently organized and acting in concert. They were determined to be content with nothing but a prompt rejection, and did not even consent to a motion to table the business, after four hours exciting struggle, until Cattell told them he would make dilatory motions all night before he would permit such an outrage. The result was the tabling of the question, with (as the opposition claim) an understanding that it shall not be again taken up.

I have advised the President that he shall leave the total responsibility with the Senate, and utterly refuse to withdraw the nomination. He cannot do the latter without losing by it. He feels that he cannot make a better nomination, and we are sure that to stand squarely by what he has done is best for him, his administration and you. By so doing he will show his unswerving faith in you and give the weight of his personal character to sustain you under the insult put upon you. Robeson and Belknap fully and heartily agreed with this, and the President said it precisely indicated his own feelings. I told him I was going to write you, and he bade me say to you that his sentiment was what I have expressed and that, even if the Senate shall finally reject, he is assured that they and the country will soon learn that a great wrong and a great error has been committed. In no event must you think of abandoning the Cabinet, for the Attorney-General's office is the πoὺ στῶ from which to bring an ultimate success and victory out of this temporary rebuff.

The Cabinet officers I have named joined in sending you messages of good cheer. Judge Poland and General Garfield, who have been in since I began writing, have done the same, expressing their shame and dissatisfaction with what the Senate has done. I shall expect to hear the voice of New England in some emphatic form before the holidays are over, and I shall believe that the

Senate will come back on the 10th of January with a consciousness of their own blunder. Sooner or later time will set this even, and you must not allow one moment of depression over it. It is rather a challenge to prove your mettle, and I remember with satisfaction what you said to me about keeping your colors flying. I often wish my friends might be spared from some of the bitternesses which every man has to taste who will not sneak through the world without a principle or a will of his own, but next to that exemption from pain, and hardly second to it, is my wish that they may make a good fight of it.

God bless you, my dear Judge, and give to you and yours both the Merry Christmas and the Happy New Year before your return; for you have the right to look down from a calm and happy upper world of your own upon the pettinesses of those who have vainly thought to do you a mischief.

Give my best wishes and regards to Mrs. Hoar and to Sam, and believe me

Always truly yours,

J. D. Cox.

Hon. E. R. Hoar.

It was after this action of the Senate, and after the Judge had come home for Christmas, that he received the response of his friends. Lowell wrote, the day before Christmas: "Don't let your nom-

ination be withdrawn. Let the responsibility lie with the knaves who hate you for your impregnability, and have n't the courage to say so. Give 'em the additional pang of being obliged to vote. It is all an honor to you. . . . I am honestly glad of anything that will keep you in the Cabinet, though in thinking it over I persuaded myself that you might have helped forward the cause of loyalty and common sense in Georgia. However I am proud of your rejection on such grounds. . . . May your Christmas turkey have as many good qualities as yourself, though of less firm quality. . . . You have deserved well of the Republic, which is better than being paid well by it."

On the same day Charles Francis Adams, Jr., wrote: —

DEAR JUDGE, — I cannot finish up work for Christmas without congratulating you and the country on the action of the Senate on Wednesday. Of all comforting things the most comforting must be to feel that one has a mission to perform, — that all responsibility and doubt are gone, and that to retreat is impossible. Such, I presume, is your position now. A great mission has been forced upon you: nothing less than to return the Senate of the United States to its proper functions in the system of government. I am very glad the job has fallen into such good hands, and I wish you a merry Christmas at Concord as you

debate on the best way of beginning your work. What was the Greek name for the thirty tyrants who undertook to rule Athens? Who was it who overthrew them? Much good fortune has of late been thrust upon you, and now I nourish a fond hope that justice will be done to all.

Very sincerely, etc.,

CHARLES F. ADAMS, JR.

HON. E. R. HOAR, Concord.

On Christmas Day Judge Hoar wrote his brother: —

"There is nothing . . . which on my account need give you pain or concern — I have heard from the President and the Cabinet, and my course is plain enough.

"My nomination will not be withdrawn, and I shall endeavor to have its rejection upon a yea and nay vote. I hope that the men of our party who vote against it will live to regret doing so, not for any harm it will do them, but from an altered opinion.

"The 'ugliness' of which you speak looks worse from the inside at Washington than from the outside, and I mean at some time or other to have the whole thing not to be sorry for."

Three days later, the Judge wrote again to his brother: —

"My public relations of course now depend upon the firmness and clear-sightedness of the President.

I have no doubt of his thorough friendship; I only hope that he will not allow himself to be entrapped into any pledges or promises to those fellows, of any kind, especially as to nominating a judge from the Rebel States on any terms. I think I see his way clear out of the difficulty, if he keeps his own counsels, and that they must break if he does not. When I am rejected, he can nominate fit Northern men in succession as long as the stock holds out, and every one that is rejected makes a new set of enemies to the men who do it, and they can't stand it. The line will break somewhere. As to 'saying die,' don't you have the least anxiety about me. As soon as I get my personal relation to the question eliminated, I will try to furnish a specimen of cheerful activity that will refresh you to witness. I may even go so far as to leave off smoking and bad manners."

Nor shall a passage from a letter of his sister Elizabeth be omitted, not only because it breathes the spirit of the family, but for its own beauty. Writing on January 2, she said: —

"Tell my dear brother Frisbie to keep a good heart, and hold up the hands of his brother and encourage his heart, and fret not himself because of evil-doers, but remember that wherever his brother Rockwood is, there is an honest, able and faithful worker, whose work will praise him and of whom his whole kith and kin have right to be proud and glad —

'Whatever record leap to light,
He never shall be shamed.'"

In spite of great pressure, President Grant would not withdraw the nomination, and forced the responsibility on the Senate, which on February 3, 1870, rejected the nomination. Senator Hoar wrote afterward:—

"The person who was chiefly responsible for Judge Hoar's defeat was Mr. George F. Edmunds of Vermont. He pretended that his chief objection was that Judge Hoar did not live in the circuit to which the judge was to be assigned for duty. I do not think he deceived himself or anybody else by that statement. He told Rockwood that all objection to his confirmation would be waived, if he would agree to take up his residence in the Southern Circuit; to which the Judge replied that he would not move his boarding-house across the street for any such reason."

Charles Francis Adams relates that some time afterward the Judge's friends were chaffing him a little over the table of the Saturday Club upon his alleged rough dealings and sharp tongue. The Judge took their wit good-humoredly, and repeated what Senator Cameron said about the Senate's rejection: "What could you expect for a man who had snubbed seventy senators?" Mr. Adams says:—

"That way of putting it undoubtedly had no little basis of truth," and explains the judge's severity to

office-seekers and their patrons by saying: "His sense of humor did not always have time to come to his rescue, and it was commonly alleged of him that, in political parlance, 'he could not see things'; the real fact being that, with his rugged honesty and keen eye for pretence and jobbery, he saw things only too clearly. And so, first and last, he snubbed seventy senators — all there were — and they, after their kind, 'got even with him.'" Mr. Adams adds: "He bore defeat as if it had been a laurel crown."

But by no means all the seventy were hostile. As appears above, many of the best made a hard fight for him. Senator Hoar says that Chandler of Michigan, one of the most bitter opponents, afterwards came to appreciate the Judge, and expressed his regret.

Mr. Justice Grier had sent in his resignation from the Supreme Bench early in December, to take effect on February 1, 1870, and Edwin M. Stanton was nominated to succeed him on December 20. The nomination was confirmed, but Stanton died on December 24, and his death, with the rejection of Judge Hoar's nomination, left two vacancies on the bench. On February 7, Mr. Justice Strong and Mr. Justice Bradley were nominated to these positions, and on the same day the Supreme Court decided the case of *Hepburn* vs. *Griswold*, in which it held that the Legal-Tender Act was unconstitutional.

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This judgment was rendered by a divided court; and after the appointment of Justices Strong and Bradley the same question was reargued, and *Hepburn* vs. *Griswold* was overruled. This result was reached by the votes of the new justices, and upon these facts the charge was made, and from time to time is repeated, that Judge Hoar "packed" the Supreme Court in order to obtain a reversal of the Legal-Tender decision. This charge was denied and is absolutely refuted by the facts in the case, as was shown by Senator Hoar in a letter to the Boston "Herald," subsequently printed in pamphlet form.[1] As a matter of fact, the appointments were decided upon and actually sent to the Senate before the judgment in *Hepburn* vs. *Griswold* was announced. The Supreme Court and the Senate both met at 12 M. on February 7, and the opinions of the justices in this and other cases were read shortly after that hour. The nominations of Justices Strong and Bradley had been signed by President Grant, and reached the Senate a few minutes after twelve o'clock. Both decision and nominations were announced to the public in the evening papers of that day.

The decision against the constitutionality of the Legal-Tender Act was most unexpected, for it was

[1] *The charge against President Grant and Attorney-General Hoar of packing the Supreme Court of the United States, to secure the reversal of the Legal-Tender Decision by the appointment of Judges Bradley and Strong, refuted.* — Worcester, Mass., Press of Charles Hamilton, 1896.

generally supposed that Chief Justice Chase would support it, since, while Secretary of the Treasury, he was the author of the law and largely responsible for its passage; but no information as to the decision had reached the Cabinet or Judge Hoar before it was given. Mr. Justice Bradley was recommended by the whole bench and bar of New Jersey, without distinction of party, and, it is said, also by his predecessor, Mr. Justice Grier. Mr. Justice Strong had recently left the Supreme Bench of Pennsylvania with a great judicial reputation, and was the leader of his profession in that state. Both were admirable appointments, and it is wholly unnecessary to seek any reason for their selection other than their eminent fitness, which was demonstrated by their whole subsequent conduct on the bench. President Grant and Judge Hoar's associates in the Cabinet, Mr. Fish, Governor Cox and Governor Boutwell, all denied that, when the appointments were considered at Cabinet meetings, there was any reference to the Legal-Tender question or to the opinion of the candidates upon it. President Grant said that he had no knowledge of the decision, or any purpose in regard to it, when the appointments were made.

Governor Cox's statement may well be quoted:—

"I can recall some discussion of the character and qualities of Judges Strong and Bradley among members of the Cabinet, but not a single word of reference to their opinions on the Legal-Tender

question, or to any case pending or likely to be pending in the Supreme Court. Nothing could be plainer than that the Attorney-General was earnestly determined to recommend only such men as combined the qualities of able lawyers with those of perfectly pure, single-minded and upright citizens. When the nominations were made, we felt that just such men had been selected."

Governor Cox adds that he would have been "quick to notice anything inconsistent with this 'good purpose,'" because his personal opinion was in accord with the decision in *Hepburn* vs. *Griswold.*

Governor Boutwell says "The legal-tender controversy was not spoken of, nor in any manner referred to by the President or by any member of the Cabinet."

When, finally, it is said, that to this charge, originating in the suspicion of some unknown newspaper writer, and repeated by General Butler, a known witness whose character and motives were never in doubt, Judge Hoar himself replied that it was "utterly untrue," in a letter fully stating all the facts, we may safely assume that the charge was as baseless as it was scandalous. It was a successor of Judge Hoar in the office of Attorney-General, Wayne MacVeagh of Pennsylvania, who concluded a reply to General Butler some years later with the scathing words: "I will not even take the trouble to deny

on Judge Hoars part the report was probably untrue - but as to Gen Grant?

any new falsehoods you may think it to your advantage to invent about me, for those who know me well will not believe anything you say against me, and those who know you of course will not believe anything you say against anybody"; and the statement needs no qualification as between Judge Hoar and the same accuser.

Judge Hoar endeavored to have the Legal-Tender question reargued in the case of *Latham* vs. *The United States* (9 Wallace, 145), but the appellants withdrew their appeal, and he therefore did not succeed. The question was however argued by his successor, Mr. Akerman, the next winter, and the decision in *Hepburn* vs. *Griswold* was reversed.[1]

Judge Hoar did not allow himself to be disturbed by the defeat of his nomination, but serenely continued his work as Attorney-General, as his correspondence shows.

On the very day when Justices Strong and Bradley were nominated, we find him writing to Lowell: —

MY DEAR JAMES, — I hear you are expected to make a visit in Washington. . . . When may I expect you, and how long will you stay? I want you to see some people and want some people to see you, so let me know as soon as you can.

The visit was a success as the next letter shows: —

[1] Knox *vs.* Lee, Parker *vs.* Davis, 12 Wall. 457.

WASHINGTON, *Feb.* 27, 1870.

MY DEAR JAMES, — I trust you survived your dissipation, and got home with Mrs. Lowell unscathed. Your coming did me a great deal of good; and our friend Ulysses (or "Ulyss," as Mrs. G. calls him sometimes) had a revelation the day after you left. He went to an evening party, where, among the entertainments provided, was reading by an adept in that art. The reader had, as one of his selections, one of the later "Biglow Papers," and, as I understand, read it very well. The President spoke to me about it the next day; said that he had never read or heard one of them before, but that it was the most perfect statement of the whole doctrine of reconstruction that he had ever met with. He seemed much impressed; and the next night gave the evidence which you as an author will recognize as the final test of sincerity, wanting to hear it again, for he procured the reader to attend at the state dinner at the White House, and read it there after dinner.

In writing on March 8, to thank Mr. Emerson for a copy of his "new book"[1] Judge Hoar said: "I feel a certain guilt in thinking of it, as at least an hour was given this morning to looking it over which ought to have been devoted to something worse. But I have found in life that virtue is not the only thing which is its own reward."

[1] *Society and Solitude.*

Mr. Forbes, a private citizen, engaged first in the China trade, and later in the development of our Western states by pushing railroads to the great corn-land on both sides of the Mississippi, though never holding office or appearing in the newspapers, had been, with counsel, activity, quick resource and generous expenditure, a pillar of state during the war, and now that sound finance, the safety of American shipping, and sane reconstruction policies were the issues, his counsels were still valued. Judge Hoar, acknowledging a letter from him on the Alabama Claims, written in March, 1870, says: —

"I think the extract from your correspondent capital in its way, well worth Mr. Fish's attention, as well as your letter in reply. I shall show both to him and to the President at the first opportunity; but, what with Tennessee, Georgia, currency funding, and tariff, there has been little said or thought about Alabama Claims for the last few days among us here.

"Strictly in confidence between ourselves, I wish Sumner had the faculty of working on a level with other human beings a little more, and did not find it necessary to his self-respect and self-estimation to be quite so near President, Secretary of State, Congress, and public instructor and guide, all rolled into one. It hurts his power for good, and I see trouble from it brewing. But there is no touching him in a rational way, and we must

take him for what he is, and 'let him gang his ain magnificent gait,' after the nature of the animal. He is invaluable for many things.

"I have at last won the fight on the judges, and except our friend P. . . (who I think will come yet), have secured the man I wanted in every case, and feel that a good service to the country has been done. My own personal affair is trifling in comparison, and I guess it is just as well it is.

"Your currency 'squib' contains sense and morals, but Chase's decision on legal tenders is not constitution, nor right reason, nor safe doctrine for the country in its times of peril, in my opinion, and I shall not stand it if I can help it."

The following letter belongs to this period and is so characteristic that it is inserted here.

WASHINGTON, *Fast Day*, 1870, 6 P. M.

MY DEAR WIFE, — I have argued a case two hours to-day — that 's instead of *preaching* — have received a small fee for it — it being for a private client — and so send you $100 — that 's for *charity* — which "begins at home" — and have gone without my dinner so far — which will do for the *fasting*. — The *humiliation* is in not having time to write you a longer letter — and the *prayer* is for the welfare and happiness of all the distant dear ones, from

Yours affectionately,

E. R. HOAR.

His position in the Cabinet had never been perfectly assured for the reasons which have been pointed out, and events were now happening which were soon to terminate his connection with the Administration.

Very soon after his inauguration President Grant was found to entertain the idea of adding territory in the West Indies to the possessions of the United States. Certain naval, military, and commercial influences, chronically working and at last succeeding some thirty years later, were urging this policy, and after the plan of recognizing the insurgents in Cuba had failed, the President's attention was directed to San Domingo. During the summer and autumn of 1869 he sent his secretary, Orville E. Babcock, to investigate conditions on this island, who on September 4 executed a procotol, and in December a treaty for the annexation of San Domingo, and another for the lease of Samana Bay.

The President set his heart upon the ratification of these treaties, but Senator Sumner opposed it, and the Committee on Foreign Relations reported against them on March 15, 1870. Debate on them began on the 24th and continued for some weeks, when the Senate laid them aside and did not take them up again until June 29. During this period the President became much inflamed against Mr. Sumner, and very anxious to secure votes enough in the Senate to ratify the treaties. To accomplish

his end he was willing to exert all the powers at his command, and the senators from the Southern states, who were more pliable than some of their Northern colleagues or more in sympathy with the annexation, were hungry for patronage. On June 23, Judge Hoar resigned the office of Attorney-General, and his colleague Governor Cox, the Secretary of the Interior, tells the story of his resignation.

The Judge, writing of Cox, when they were fellow members of the Cabinet, said, "He is one of the truest and best of friends, as well as one of the noblest men in the country, which Grant knows as well as I," and he is so unimpeachable a witness that the leading incident is given here in his words:[1]—

"When Judge Hoar's nomination to the bench had been defeated in the winter, he again sent word by closest friends that his resignation would be at the President's disposal; but General Grant saw nothing to make a change in their relations desirable, and the subject was dropped, definitely as I supposed. Delicacy had prompted the Judge thus to speak through others, so that no feeling of personal regard might make the President hesitate to express his wish. More than four months had elapsed, and the Attorney-General, like the other members of the Administration, had devoted

[1] "How Judge Hoar ceased to be Attorney-General," *The Atlantic Monthly*, August, 1895.

himself to the work of his own office, forgetting, as far as possible, including San Domingo, what did not directly affect his own responsibilities."

Governor Cox then tells how, on an evening in June, he read in the New York "Times" that the Attorney-General had given in his resignation, and the President had accepted it. He could hardly trust his eyes, knowing that nothing had been further from Judge Hoar's thoughts but a day or two before, and no suggestion of such a thing had come from others. "That such changes in the Administration could be made without announcement to its members, leaving them to learn it from the public press, was incredible." He started for the Judge's lodgings, and on the way was stopped by Senator Henry Wilson, equally amazed.

"Reaching the Attorney-General's lodgings, I opened the conversation almost in the words Senator Wilson had used to me: 'Well, Judge, what *does* this mean?' 'Sit down,' he said, 'and I will tell you.' The recollection of what he said is so vivid that I may safely say that I give it in his own words: —

"'I was sitting in my office yesterday morning, attending to routine business, with no more thoughts of what was to come than you had at that moment, when a messenger entered with a letter from the President. Opening it, I was amazed to read a naked statement that he found himself under the necessity of asking for my re-

signation. No explanation of any kind was given, or reason assigned. The request was as curt and as direct as possible. My first thought was that the President had been imposed upon by some grave charge against me. A thunder-clap could not have been more startling to me. I sat for a while wondering what it could mean; why there had been no warning, no reference to the subject in our almost daily conversations. The impulse was to go and ask the reasons for the demand, but self-respect would not permit this and I said to myself that I must let the matter take its own course and not even seem disturbed about it. I took up my pen to write the resignation and found myself naturally framing some of the conventional reasons for it, but I stopped and destroyed the sheet, saying to myself, "Since no reasons are given or suggested for the demand, it is hardly honest to invent them in the reply," so I made the resignation as simple and unvarnished as the request for it had been.' . . .

"In the afternoon, he had occasion to submit papers in some pardon cases to the President and went to the Executive Office for that purpose. Meanwhile the acceptance of the resignation had been sent to him, and this was framed so as to convey the sentiments of personal good-will and high respect which no one in near relations to them doubted that General Grant actually felt. This letter was published with the brief resigna-

tion. The equally brief request for the resignation has never been given to the public. The omission, as every one must see, wholly changes the effect of the correspondence. On meeting Judge Hoar, the President enlarged to some extent upon his personal confidence in him, and the real regret with which he severed their relations, and now frankly connected his own action with the exigency in which he found himself, and the necessity, to carry out his purpose, of securing support in the Senate from Southern Republicans, who demanded that the Cabinet place should be filled from the South. He reminded the Attorney-General of what had passed in the winter relative to his resigning, and said he had assumed that this connection of things would be understood, without further words. Judge Hoar assured him that the explanation removed any painful impression that might have been made at first; that his only wish was that the Administration might be a success in every respect, and that no personal interest of his should for a moment stand in the way of it. He then, however, took the liberty of saying that he thought he knew the class of men who had desired his removal, and he hoped, for the President's own sake, that he had chosen his successor, since otherwise he would be subjected to a pressure in favor of unfit men which might prove most embarrassing to him. General Grant naïvely admitted that he had not yet given any thought to that part

of the matter, but appeared to be struck by the wisdom of the Judge's suggestion and himself asked that the whole matter remain strictly confidential till he could reflect upon it, when he would call it up again."

A day or two later, the President asked Judge Hoar his opinion of Mr. Akerman of Georgia, whose appointment he was considering. The Judge replied, "I believe Mr. Akerman to be an honest man, sir, and a good lawyer," and then added, "It would hardly be proper for me, Mr. President, to say what should be the standard of fitness for the Attorney-Generalship of the United States." He then took his leave, and Mr. Akerman's nomination was immediately made.

It appeared that some "carpet bag" senators told the President that, while they would gladly please him, Mr. Sumner had such controlling influence over their colored constituents that it was dangerous for them to oppose him on the San Domingo question. These were disappointed in the help they expected from the Administration by way of patronage to smooth over opposition. Grant asked where they found lack of consideration. They said from the Attorney-General, and asked that he be displaced by a Southern man.

Mr. Cox tells that, at the next meeting of the Cabinet, by the common consent of the members, no other business was brought forward, as it was

assumed that the President would give some account of so unusual a procedure with no information on the subject furnished them, so that they first learned of the change from the newspapers. The President seemed surprised that no one brought up any business, waited a moment, and said that in the absence of business the meeting might as well adjourn. "No reference to the subject of any sort was ever made by General Grant in the presence of his assembled advisers."

The evidence is very strong that some one about the President, perhaps his secretary, Babcock, furnished a copy of the Judge's resignation and the President's acceptance of it to the New York "Times," that the step might be irrevocable, and purposely withheld the letter requesting the resignation, to lay the unpopularity on the wrong shoulders.

Judge Hoar remained in office until his successor could be ready to assume his duties. Then he brought Mr. Akerman to the Cabinet-room and introduced him to his colleagues. He then turned to the President and said, "Having presented my successor, I will take my leave, wishing the most abundant success to your administration." General Grant answered that, although he should not see the Judge in that place again, he hoped to meet him elsewhere frequently.

On leaving Washington, the Judge wrote to the President the following letter: —

WASHINGTON, *July* 7, 1870.

MY DEAR SIR, — In terminating our official relation, I cannot forbear to express to you the feelings of personal regard and affection to which it has given birth. Since I have been a member of your Cabinet, I have never heard at any meeting a suggestion in regard to any public measure except a desire to promote the public welfare. Meeting as comparative strangers, we have been in our intercourse and relations almost a band of brothers. That your chief motive of action was the desire to deserve well of your countrymen by faithful public service, I believed when you first invited me to act as one of your advisers, and the belief has been strengthened and confirmed by all that I have since seen and known.

For the honor which you gave in the selection to a place in the government, I desire to thank you. I have endeavored to repay it by faithful and honest counsel, and am sure that in parting, I leave no one behind me who has a more sincere wish for your success, honor and happiness than

Your friend,

E. R. HOAR.

U. S. GRANT,
President.

Sincerely anxious that Grant's administration should be a success, Judge Hoar never made public the full story of his resignation, and urged his

friends to ignore everything that was personal to himself. Only after his death did his colleague tell the story of his magnanimity. His friend Mr. Emerson wrote in his journal of those days: "I notice that they who drink for some time the Potomac water, lose their relish for the water of the Charles River, the Merrimac and the Connecticut. But I think the public health requires that the Potomac water should be corrected by copious infusions of these provincial streams. Rockwood Hoar retains his relish for the Musketaquid."

To join his family, and see his home and beautiful garden by that stream must have been a blessed change. Commencement too was at hand, a sacred festival to that loyal son of the University, and his son Charles was to graduate. Secretary Cox, whom he had invited to be his guest, wrote: "It seemed to me that the return to the associations of his home was peculiarly grateful to him, in the stress of spirit to which he had been subjected. He dwelt with evident pleasure upon everything which recalled the self-devotion of the old patriots, and upon the incentive it was to act upon nobler motives than personal ambition, or even the confidence of success."

July 10, the day after reaching home, he wrote his brother Frisbie: —

"I got home safe and tired last night, and found myself much used up this morning. The excitement and labor of the last few days in Washing-

ton had been pretty severe, as I found when the reaction came, but to-night I am feeling fresh and hearty again and I expect to begin work on my 'first case' to-morrow morning with a good relish. . . . I only hope my parting exhortations to the President will last him through the session. I heard of something he said to a senator next morning that showed part of it was working right.

"Washington and my life there looks very far away already, but, on looking the past year and a half over, I doubt whether I shall ever be likely to do more good again in the same time."

He tells of a letter from Attorney-General Akerman expressing gratitude for his kindness.

To the serious chronicle of his life as Attorney-General may be added, in conclusion, part of a letter to Mrs. Hoar, and one to Mr. Lowell, since they bring a little light into the picture, and show how he bore extreme conditions of life.

EXTRACT FROM LETTER TO MRS. HOAR

WASHINGTON, *July* 17, 1869.

It is hot! hotter! ! hottest! ! ! hottentot! hottentotter! hottentottest! more hottentotter! most hottentottest! ! ! ! ! ! ! ! ! The daily bill of fare is as follows

For breakfast, Attorney-General broiled
" dinner, " " roasted
" supper, " " boiled

and the same dish kept hot in an oven, and served at any hour of the night. Flies and mosquitoes taken to board by the day, week or month, on reasonable terms.

The thermometer was reported at 106° yesterday, but I don't believe it. — At the National Hotel it was said to be at 110° — in the shade — but that house is largely resorted to by Democrats, who may bring some little premonitions of their future prospects with them — J. C. B. Davis came with his carriage last evening and Secretary Fish and Robeson with him to invite me to take a drive starting at $7\frac{1}{2}$ — and not returning till near ten — We went through Mr. Corcoran's grounds and by the Soldiers Home, and it was very refreshing.

CONCORD, *Sept.* 1, 1869.

MY DEAR PROFESSOR, — Your letter came this morning. I had previously written to J. H. that I should expect you and him on Thursday, by the train which leaves Boston at 4 P. M. (*not* 4.30, "as certain Anabaptists falsely pretend"). I expect to be in the train, and to pick you up at Porter's at 4.10 — If this weather holds, bring your flannel shirts and great coats. — We have blankets, and a wood pile, and coal in the cellar. Don't be tempted to stop, if you see Walden Pond frozen over. The river will be safer. Perhaps your own skates will fit you better than any I have — but we have plenty of sleds, and a tremendous thermometer.

I came from the direction of the North Pole last evening and left nothing to be desired behind me. Do you remember the summer? I believe there was one — but this seems to me the earliest fall known — except Adam's.

Yours stiffly, yea, rigorously,

E. R. Hoar.

Prof. Jas. R. Lowell.

It was during this period that, in a letter to Mr. Forbes acknowledging payment for some legal service, he laid down the rule on a subject of perennial interest to his profession; and, as the *dictum* of a very high authority, his statement is preserved: —

"'The etiquette of the bar' to which you allude, so far as I ever understood it, is for lawyers to receive thankfully whatever their clients offer or choose to pay them, and to send bills to such as are indebted whenever in want of money — which is apt to lead to great punctuality in settlements."

To this time also belongs his speech at the dinner of the Harvard Alumni on June 29, 1869, which was as follows: —

"*Mr. President, Brethren and Sons of Harvard:* I wish I could furnish anything so delightful to your ears as is the sight of your faces to my eyes. I have very little to offer you except the expression of my pleasure in being with you to-day. But a single thought, derived from the opening re-

marks of our president, I wish to suggest. I read last week in one of those publications, the writers of which seem to think that they have a call to regulate not only the politics but the morals and the culture of the country — I mean the New York newspapers — something like this sentence: 'A sad occurrence; two rich men in Boston died last month, neither of whom left anything to Harvard College, and neither did either of them leave anything to the Massachusetts General Hospital, another sponge that has soaked up its hundreds of thousands from the community.' Well now, brethren, it is á graceful custom to express on such occasions as these our gratitude to our benefactors, — to those men who have endowed the College from its infancy to its present maturity and strength. But the idea that I for one wish to express on this occasion is, the debt which the benefactors owe to the College. They owe to it that they are not to have that dreariest and saddest of all epitaphs recorded in history: 'The rich man died and was buried.' It has been one of the first functions of Harvard College, from its foundation, to educate the community to have a sense of public duty. It is to the influence of Harvard College that we owe the character of the men who are its benefactors. From that day of poverty and weakness, when the colony contributed from its small stores 'to the end that learning should not die in the graves of the fathers,' until the

present time, the influence of the College, spreading as it goes through the country, has been felt in this relation. I would say nothing in disparagement of the other colleges which are its descendants, nor of their fair and just share in this influence; for much as I love and admire, and much as I hope from our institution, I am willing to see that there shall be more beautiful daughters of the beautiful mother elsewhere; but wherever throughout this broad land you find the spirit of public duty, there you will recognize the spirit of Harvard."

It was of his appearance on this occasion that Mr. Emerson wrote in his diary: —

"Judge Hoar in his speech at the Alumni dinner at Cambridge yesterday was a perfect example of Coleridge's definition of genius: 'The carrying the feelings of youth into the powers of manhood,' and the audience were impressed and delighted with the rare combination of the innocence of a boy with the faculty of a hero."

CHAPTER VI

THE PUBLIC-SPIRITED CITIZEN

Mr. Emerson's note "that they who drink for some time the Potomac water lose their relish" for the streams of their native state, expresses poetically an almost universal truth. Washington exercises a strong fascination over those who have ever become at home there, and men who have once tasted the sweets of power are very loath to lay it down. The corridors of the capitol and the avenues of Washington are haunted by the ghosts of public men who have lost their offices and are seeking in some way to enter again the public service. The loss of one office constitutes in their eyes a valid claim to another, and their importunities grow with their necessities.

A striking exception to this rule, Judge Hoar turned from a place where he was exercising a direct and powerful influence over the affairs of a great nation to the quiet life of a private citizen in a New England town, with absolute serenity. He made no claims on the Administration, made no suggestion even to his most intimate friends that he was disturbed by the change, but quietly resumed the even tenor of his way.

On July 18, 1870, he wrote to Mr. Lowell:

"Like the man who retired on a single anecdote, I have left the public employment on a single professional engagement, and its necessities will, as I now expect, take me up to Vermont on Monday next to be gone for two weeks." After that "I shall want and depend upon you and John [Holmes] for a few days at that time to aid me in some explorations by land or water."

On August 12 he returns to the subject thus: —

MY DEAR JAMES, — I have been at home for a week; but it has been so fiery hot, dusty, and generally uncomfortable, that I have not had the assurance to invite anybody to partake of my misery. But we have had rain! and now are as good as new — and want you and John to come and make our felicity complete. When will you come? I shall be glad to see you any time within the next ten days, and probably ever after. Chaucer has got his deserts at last, I am glad to see, — and now I want mine.

Rouse John, and come.

Faithfully yours,

E. R. HOAR.

But he was not permitted to remain long at home. His country had need of his wisdom and his character in an international matter of high importance, difficult, and dangerous to adjust.

When the war ended, it became the duty of our

minister, Mr. Adams, to call the attention of England to the claims of the United States for the depredations committed by the *Alabama* and other privateers, wholly or partially equipped in England or sheltered in her ports. His communication was coldly received. It has already been told how, in 1869, the Johnson-Clarendon Treaty, when submitted to the Senate, was killed by Charles Sumner's powerful attack, in which he showed that it was wholly inadequate, since it provided only for the adjustment of individual claims and left untouched the far greater claims of the nation, while it settled no rule of international duty, which should not only be recognized as governing the past, but should be established as a guarantee for the future.

Mr. Schurz stated Mr. Sumner's purpose very clearly when he said: "What he desired to accomplish was, not to extort from England a large sum of money, but to put our grievance in the strongest light, to convince England of the great wrong she had inflicted upon us, and thus prepare a composition which, consisting more in the settlement of great principles and rules of international law to govern the future intercourse of nations than in the payment of large damages, would remove all questions of difference, and serve to restore and confirm a friendship which ought never to have been interrupted."

The Senate's rejection of this treaty for the

reasons stated in Mr. Sumner's speech "startled the British Ministry and aroused deep resentment through the country. The mere suggestion that England ought to apologize rendered further discussion impossible, in the opinion of most Englishmen. The matter was dropped until 1871, when it was suddenly brought forward by a skilful diplomatic move. President Grant, in his message, reported that England would not admit that America had a grievance, and therefore he recommended that a Commission be appointed to take proof of private claims for damages suffered from the *Alabama,* or other vessels, with authority to settle the same by purchase, so that the United States might own and control all such demands against Great Britain." [1]

This quiet and significant suggestion, coupled with the fear that the Franco-Prussian quarrel might draw England into war, and render her own views of a neutral's obligations highly inconvenient to herself, almost immediately resulted in unofficial advances from the English Government. England had every reason to be anxious. Some adjustment was imperative, for her turn to suffer by her arrogant theory and practice might come at any moment. Both countries realized that another failure might entail disastrous consequences. Tactful preliminaries resulted in the appointment

[1] "Decisive Battles of the Law," by Frederick Trevor Hill; *Harper's Monthly,* January, 1907.

of a Joint High Commission empowered to meet at Washington and negotiate a treaty for the settlement of all differences. On February 7 we find the Judge writing: "Washington seems farther off to me than it ever did, but I take a slight posthumous satisfaction in hearing of what goes on there"; and on February 20 he was appointed a member of the Joint High Commission.

The five Commissioners for the United States were Hamilton Fish, Secretary of State; Robert C. Schenck, newly appointed Minister to Great Britain; Samuel Nelson, Justice of the Supreme Court; George H. Williams, Senator from Oregon; and Judge Hoar — "fitting representatives of the diplomacy, the bench, the bar and the legislature of their own land."

The five Commissioners for Great Britain were Earl de Grey and Ripon, President of the Queen's Council; Sir Stafford Northcote, ex-Minister, and actual member of the House of Commons; Sir Edward Thornton, the accomplished and respected British Minister at Washington; Sir John A. Macdonald, the Premier of Canada, and Professor Montague Bernard, representative of the English Universities.

The following extract from a letter written on April 27, 1871, by Sir Stafford Northcote to Mr. Sumner, shows that the "irritation" caused by Mr. Sumner's speech on the Johnson-Clarendon Treaty had subsided, and that the real purpose of that

speech was now recognized. He said: "I have to thank you for sending me your speech on the Johnson-Clarendon Treaty. . . . I cannot tell you how cordially I sympathize with what seems to me the governing idea of the speech. Great international differences are not to be disposed of by huddling them up and pretending not to look at them, nor to be treated as a man treats a bad shilling by trying to pass it among a handful of half-pence . . . and though I must own your speech was somewhat sharp, I verily believe that it taught us a valuable lesson in that respect, and that we may say of it, '*Fidelia vulnera amantis.*'"

The Commission completed its difficult work on May 8, 1871, when "The Treaty of Washington" was signed, and on the same day the Judge wrote to his brother Frisbie: "At 11.12 this forenoon the treaty was signed, and we are waiting for the verdict. . . . I shall probably stay a week or two longer to explain things to senators, if explanations are wanted, and then retire from public life." Of it Mr. F. T. Hill, in the paper above quoted, said: "Certainly the document . . . seemed to meet all the objections which had been so forcibly urged against the Johnson-Clarendon Treaty. In the first place, it provided for 'the amicable adjustment of *all* the differences between the two countries,' a distinct recognition of the national character of the dispute. In the second place, it

specifically referred to 'the claims of the United States, generally known as the Alabama Claims,' and expressed 'the regret felt by her Majesty's Government for the escape, under whatever circumstances, of the *Alabama* and other vessels from British ports, and for the depredations committed by those vessels,' a most acceptable substitute for the impossible apology. Next, it laid down certain rules or principles of international law upon which it should be assumed that England had undertaken to act in the past, and which both nations agreed to observe in the future. And, finally, it provided for an impartial Board of Arbitration, with ample powers to adjust all outstanding grievances. In a word, it was a complete diplomatic triumph for the United States, and a virtual acknowledgment of the justice of the issues for which it had so long contended."

Judge Hoar's work and influence were important in the Commission, which drew up a treaty so excellent that it received the prompt approval of both governments; which, in the words of Caleb Cushing, a high authority on international law, "passed unscathed through the severest ordeal of a temporary misunderstanding between the two governments (at Geneva), respecting the construction of some of its provisions; which has already attained the dignity of a monumental act in the estimation of mankind, and which is destined to occupy hereafter a lofty place in the history of

the diplomacy and the international jurisprudence of Europe and America."

But high praise is due Hon. Charles Francis Adams for the dignity, tact, and temper with which, later, he overcame the opposing tactics of Sir Alexander Cockburn, when it looked as if the arbitration would be wrecked in port.

This anecdote of Judge Hoar should not be lost. When it came time for the members of the High Commission to sign and affix seals to the Treaty of Washington, Lord Tenterden, having signed and affixed his seal, asked the Judge if he had any family seal of his own or any family crest. "None, excepting a sleeve button that may answer the purpose, my family being without any other insignia," answered the Judge.

At the Commencement dinner in July, the Judge was called upon to tell the Alumni of his success. When the tremendous applause subsided, he said: "Brother Alumni, my speech to you today will consist of two quotations. One is from a letter which John Jay wrote to his wife when he had negotiated the Treaty of London: 'What I think of the Treaty you will know when you hear that I signed it.' The other is Sydney Smith's remark about his countrymen: 'Mr. Bull is silent, not because Mr. Bull doesn't want to talk, but because Mr. Bull has nothing to say.'"

There is little doubt that the distinguished Britons of the Commission discovered that they

were dealing with a man of wisdom and wit. One would have given much to see their faces when he astounded these University men with a classic quotation, supporting a statement as to the antiquity of a legal custom common in America. They inquired with interest about the American practice of registering deeds, as the need of some such system was felt in England. The Judge explained it, but told them they were mistaken in thinking the scheme new; that it was employed by the Greeks centuries before the Christian era. The Englishmen showed surprise and incredulity. He went on: "Not only did they register their deeds, but they were familiar with the doctrine of 'constructive notice,' for we read in the Anthology, —

"Athenian Æschylus, Euphorion's son,
Buried in Gela's earth, these lines declare;
His deeds are registered at Marathon,
Known to the deep-haired Mede who met him there."

Having accomplished, with his associates, a work of beneficence for the two countries and for mankind, the Judge returned to his native village and resumed the practice of law in Boston.

In the autumn of 1871, General Benjamin F. Butler made his first attempt to become governor of Massachusetts, this time by seeking the nomination of the Republican party. Judge Hoar took an active part in organizing the opposition to him, not only during the campaign for the election of

delegates, but also in the convention, and he undoubtedly exercised a powerful influence in securing Butler's defeat.

Though Grant's first administration was now closing amid scandals of various sorts, and though the Judge cannot have approved the President's political advisers, or his course in various matters, he apparently felt no sympathy with the "Liberal Republican" movement in the spring of 1872, which resulted in the unfortunate nomination of Horace Greeley for President. He seems to have occupied himself wholly with the practice of law until the autumn, and, as might have been expected, there was no lack of clients.

In August, 1872, he replied to a letter asking him to speak in another state: "It is hard to refuse such an invitation, for I feel strongly the obligation of every true Republican to do all in his power, however little it may be, to help the good cause. But first, I am not in political life at all, and it hardly seems natural to go on a political tour into another state; second, I don't think I have any particular gifts in the way of popular oratory and should not be of much use." In the autumn, however, he was nominated by the Republicans for representative in the Forty-third Congress from the Middlesex District, and was elected by 11,742 votes against 5,989 cast for his opponent. He was also chosen a presidential elector on the Republican ticket.

In a letter of October 27 there is a contemporary record of the singular epidemic which visited the horses in Boston and its neighborhood, and by crippling the fire-service, materially contributed to the rapid spread of the great fire which burned over some eighty acres in the heart of Boston a few days later. He says: "Boston yesterday presented a very singular appearance. No omnibuses, no horse-cars, no express wagons, no loaded teams, the sidewalks crowded, but no noise of any kind, and all business very much interrupted. The Concord expressmen would take nothing that they could not carry in their hands. Trunks were taken from one railroad to another in wheelbarrows and handcarts."

Some one rightly said of Judge Hoar: "His love of the College was like a son's love for his mother." President Walker said that this devoted son had been able to serve her in a thousand ways by the wisdom of his counsels and the weight of his character.

A characteristic act, most important in its effect as suggestion and example, occurred just after the Boston fire, and is thus reported by Mr. Charles Francis Adams: —

"President Eliot told me that, a day or two after the fire, he, the treasurer of the College, and I think one other member of the Corporation, were seated in the treasurer's office, computing as well as they then could the extent of the calamity, and

looking each other in the face in blank dismay. The disaster seemed fairly irretrievable. Footsteps, he said, were then heard on the stairs outside, and, opening the door, Judge Hoar came in.

"He had in his hand a bond, railroad or otherwise, just taken apparently from his box, and with as deep a feeling as he ever allowed himself to show, he proceeded to say that he considered he owed everything to Harvard College, — a debt nothing he could do or give would ever repay; that he saw she had been one of the heaviest losers by the fire, and now stood in need of help; and so, as one of her children, he had brought in his contribution now; and, so saying, he handed the bond to the treasurer. Some one else, I do not remember who, presently appeared that day on the same errand; and, added the President, it then occurred to me that if these two felt thus, others probably felt the same way, and an immediate public appeal for aid was decided upon. The blow thus struck was timed exactly. Within sixty days, more than $180,000 poured in upon the astonished treasurer."

This action of President Eliot's, Mr. Adams well calls "The Napoleonic stroke of mendicancy."

Immediately after the election, Judge Hoar wrote to Mr. Evarts: —

"The election seems to be satisfactory, except that I am personally in a bad scrape by being

elected to Congress. I wish that the result in your state could lead to your going to the Senate."

A few days later he wrote to President Grant the following letter: —

CONCORD, *Nov.* 18, 1872.

MY DEAR SIR, — You have received the congratulations of so many people on the result of the election, that it hardly seems worth while to send you mine, and I should have been willing to leave you to take them for granted, and even the fact that our little village gave you one more majority than in 1868. But I do wish to say one thing: in the few speeches which I made in the canvass I always reminded the people how steadily you had pressed upon the attention of Congress, in each of your annual messages, the duty of taking active measures for a return to specie payments, and nothing seemed to elicit a more hearty response. Will you permit me to express the hope that your next message and every succeeding one till the object is accomplished, will show that you mean to fight it out on that line. The solid sense of the community, among rich and poor, favors it; and we hope the Boston fire will not be made a pretext for the additional calamity of an expansion of the currency. . . .

The great satisfaction which I have felt in the result of the election, in the result at Geneva, and the St. Juan decision, is only impaired by the dis-

agreeable conduct of my neighbors in electing me to Congress against my wishes, interests and remonstrances.

Very respectfully and truly yours,

E. R. HOAR.

THE PRESIDENT.

His practice had been growing, and the following extract from a letter of December 18, 1872, to his brother Frisbie is interesting in this connection.

"It looks very certain that the Jumel case will not be finished till some time in January, after the Congressional holidays, but the court does not sit on Saturdays and I can go to Boston by the night train of Friday, January 3, and be in Boston to argue the Gas case on Saturday morning, if that will suit you, Judge Nelson and the court. It will be the best I can do.

"I have a hard case here, but preserve my sweetness and serenity amidst all the wranglings and asperities between my associates and opponents. The Judge has intimated that my presence has introduced a better atmosphere than was felt at the last trial, so you may hope that my bad manners are not incorrigible."

The Jumel case was a *cause célèbre* of the day, and it involved the title to very valuable estates. It was long and sharply contested, and asperities between counsel were not unnatural, so that the

Judge's associates might almost have suspected that his serenity was due to the fact that he had not become thoroughly enlisted in the contest. It is true, however, that from this time on, he regarded the suits in which he was engaged with a more judicial temper than is often possible when a lawyer is young and has his reputation to make.

The deaths of Chief Justice Chase and Chief Justice Chapman left their seats vacant during the summer of 1873. On August 29, Judge Hoar was offered and declined the Chief Justiceship of Massachusetts. Very likely he did not wish to stand in the way of his friend Judge Gray. On September 25, he wrote to his brother: "I saw Sumner to-day, and he said he met you yesterday. He goes for me for Chief Justice, and you for Senator, but his opinion, though worth having, is not so potent as it was. *Next* to me for Chief Justice he would be willing to take Evarts."

The President's political environment was not then favorable to such a suggestion, nor to Mr. Sumner who made it, and, as will be remembered, after the nominations of Attorney-General Williams and Caleb Cushing had been made and rejected, the choice fell, as Judge Hoar said, "on the favorite of the law, an innocent third party," and Chief Justice Waite received the appointment. Indeed Judge Hoar made no effort to obtain the position, and favored Mr. Evarts, to whom he wrote as follows: —

CONCORD, *July* 2, 1873.

DEAR WILLIAM, — As to the Chief Justiceship, it would pain me very much to suppose that the President would omit the most fit man for it, if he does not resort to the present members of the Court, and I have not the least belief in any such selection as you intimate. I think he will appoint you, as he ought to do, or Judge Miller, who is able and respectable, and the next best thing. Failing these, there are enough poor sticks to scramble for it, and it would be as likely to go to the poorest of the lot as any way. At any rate there is nothing to put me in the list. If fitness governs, you will be the foremost, and if it does not, I should be sorry to think I was in a competition on other principles.

Very truly yours,

E. R. HOAR.

HON. W. M. EVARTS.

In the autumn of this year General Butler made another attempt to obtain the Republican nomination for governor of Massachusetts and was again defeated. At a meeting of his opponents, Judge Hoar made a speech in which he said: "The people of Massachusetts will not yield the office of governor to a Tichborne claimant, either with or without a bond"; and from this, Butler got the nickname of "The Claimant," which stuck to him permanently thereafter.

x Faint praise. For a man of Justice Miller's calibre.

In December, 1873, Judge Hoar took his seat in the Forty-third Congress. The previous Congress had investigated the Credit Mobilier scandal, and the Republican leaders were fast losing their hold upon public confidence. Judge Hoar found Mr. Blaine, who was the Speaker of the House, very attractive, and conceived a strong regard for him, which proved not to be easily shaken when it was tried at a later day. He was, however, in opposition to the Republican party on some measures which the Administration had much at heart. The panic of 1873 had begun in September, the country was suffering from severe financial depression, and the question of the currency was immediately pressing. The remedy proposed by the Republican majority was an increase in the volume of the currency, and the so-called "inflation bill" passed both Houses in April. The President unexpectedly vetoed it, and by so doing saved the country from what must have been the ruinous consequences of the measure. In this course he was supported and perhaps advised by Judge Hoar.

When, at the next session, Senator Sherman's resumption act, passed by the Senate in December, came up for action in the House, Judge Hoar with his brother, Henry L. Dawes, and others, voted against it on the ground that it permitted an inflation of the currency, and was ineffectual to accomplish its avowed purpose; but it was passed in

spite of their opposition. The day after its passage Judge Hoar wrote to Mr. J. M. Forbes as follows: —

WASHINGTON, *Jan.* 8, 1875.

DEAR MR. FORBES, — You saw by the telegram and newspapers that the finance bill passed the House, without opportunity for discussion, amendment, or even remonstrance.

It will be promptly signed by the President, and he will then try to stimulate Congress at this session to make some preparation for resuming specie payment (*entre nous*, he is thinking of sending a special message for that purpose). He favors the plan of beginning to redeem now, at a fixed rate, to decline gradually to the end of the four years. Bristow interprets the act as not authorizing a reissue of greenbacks withdrawn on the issue of additional bank-notes.

I did what I could against the bill in private, and have the promise of some men who voted for it, to try to supplement it by something to make it effectual. Such men voted for it as a bar to something worse, and a pledge of good intentions — as "the grave of inflation," as they call it.

Is not the devil and all broke loose in Louisiana? We are trying to keep still till we get the report of our Committee.

I find myself well again — and reasonably pugnacious.

Very truly yours,

E. R. HOAR.

JOHN M. FORBES, ESQ.

The last paragraph of the letter referred to a crisis in Louisiana politics. The returning board of that state, a body whose reputation was not high and was soon to become most unsavory, had apparently undertaken to unseat certain Democrats elected to the legislature, and had referred the election of others to the House itself. That body met, seated the five members and chose a Democratic speaker, whereupon Governor Kellogg, whose own title was clouded, sent General de Trobriand with a body of Federal troops who forcibly ejected the five members, and the House was then reorganized by the Republicans. This action roused very general and warm indignation at the North, and meetings were held in New York and Boston, as well as elsewhere, to denounce it, which were addressed and officered by strong Republicans. The President in a special message submitted the facts to Congress, and a committee of investigation was appointed by the House of Representatives, which reported against the action of the returning board. While this question was pending, the President early in February sent in a message proposing to set aside the state government of Arkansas as illegal, and shortly afterward the measure known as the "Force Bill," which gave the President great power over elections in the Southern states, was brought forward. To this whole policy Judge Hoar was opposed, and with some forty of the better Re-

publicans he voted against the "Force Bill," but it was passed, only to fail in the Senate. The bill to annul the election of a Democratic governor and legislature in Arkansas was defeated in the House, and no one who knew Judge Hoar can doubt that his influence was potent in rallying the opposition to these measures.

Among the other services which his knowledge and ability enabled him to render was the revision of the United States statutes to which he contributed much as a member of a committee to which the work of the revisers was referred.

While Judge Hoar was in Congress, on March 11, 1874, Charles Sumner, the great senator from Massachusetts, died, and Judge Hoar was with him during several hours before his death. The letter in which the Judge described Mr. Sumner's last moments should be preserved.

My dear Mr. Emerson, — Sumner is dead, as the telegram will have told you before you receive this. He died at thirteen minutes before three this afternoon. I held his hand when he died; and except his secretary and the attending physician, was the only one of his near friends who was in the room.

His last words (except to say "Sit down" to Mr. Hooper, who came to his bedside, but had gone out before his death) were these, "Judge, tell Emerson how much I love and revere him."

I replied, "He said of you, once, that he never knew so *white* a soul."

During the morning he had repeated to several persons, to me among the rest, "You must take care of the Civil Rights Bill." That was his last public thought.

Very sorrowfully and affectionately yours,

E. R. HOAR.

WASHINGTON, *March* 11, 1874.

When Sumner spoke for the last time in the Senate, appealing to Senator Edmunds for support of this measure, he said, "My desire, the darling desire, if I may say so, of my soul at this moment is to close forever this great question, so that it shall never again intrude into these chambers, so that hereafter in all our legislation there shall be no such words as 'black' or 'white,' but that we shall speak only of citizens and men." The bill in a modified form became a law, but was pronounced unconstitutional by the Supreme Court.

In spite of the temperamental peculiarities which made Sumner often a subject of criticism, his breadth, his nobility, and his courage well merited the words of Judge Hoar in the House of Representatives: "Wherever the news of this event spreads through this broad land, not only in this city among his associates in the public councils, not only in the old Commonwealth of

which he was the pride and the ornament, but in many quiet homes, in many a cabin of the poor and lowly, there is to-day inexpressible tenderness and profound sorrow. There are many of us who have known and loved the great senator, whom this event unfits for public duties or for any thoughts other than those of that pure life, that faithful public service, that assured immortality."

Judge Hoar was obviously in character and ability the best son of Massachusetts to take the chair that Sumner had left empty. He was urged to be a candidate and consented. He wrote to his friend Richard H. Dana, Jr., after the proposal had been made, on March 30, 1874:—

"I have no desire to be senator, though, as I am in for it to the end of this session of Congress, I could probably get a better hearing in the Senate than in the House, and so have no objection to the change. But I am most deeply interested in the fight, and in our side." He added, after speaking of another candidate's wish for the place, "I wish he could have the personal gratification, and I always disliked to get for myself anything that somebody else wanted." An examination of his whole record makes it clear that this statement is literally true.

His interest in the matter was purely patriotic. He was nominated, but all the influence that General Butler and his friends could exert was used

against him. Hon. Henry L. Dawes was elected, and, in the following January, the Judge wrote to the same friend : —

"The personal relief to me of being taken out of the class of supposed candidates for office is very great, and I look upon the speedily approaching close of my public life with unmingled satisfaction."

The Judge served only one term in Congress, but made himself felt and respected. He gladly returned to his home and his practice, declining a renomination. While in Washington, he was appointed a regent of the Smithsonian Institution.

He found many friends in Washington, and carried into society some of his New England traditions. A little glimpse of his social side is found in this extract from a letter of April 2, 1874 : —

"We have invited Mrs. Ricketts to furnish us some pancakes to-night in honor of the Massachusetts Fast. I told her that I had eaten pancakes on that anniversary between fifty and a hundred years and did not like to stop."

During the summer of 1874, in a letter to his cousin Mr. Evarts about the latter's eulogy of Chief Justice Chase, he says : "It is certainly able and ingenious, and I admired the skill with which you bring up in it things which you wished to say on your own account. But . . . I do not believe the sound judgment of this generation or

the judgment of history will agree with your estimate of Chase, who was insincere, selfish and intriguing, and did more than any one else to degrade and ruin the office of Chief Justice."

It was while he was in Washington that he was asked his opinion about another judge, Judge R—— of Massachusetts, who had been appointed to the Treasury by President Grant. Some one at dinner turned to him and said, "The new Secretary comes from Massachusetts, and you, Judge, can tell us all about him."— "No," said the Judge, "I assure you his reputation is wholly national."

The Republicans of his district nominated Dr. J. C. Ayer (whose name was well known all over the country as the maker of certain proprietary medicines) to succeed Judge Hoar, but he obtained the nomination by methods which were not approved by many of his constituents. The candidate did not command the undivided support of the party; and among others who opposed him was the Judge's son, Samuel. The Republican party suffered a crushing defeat at the election in 1874, and the new House was strongly Democratic. Dr. Ayer shared the fortunes of his party, and while there was no organized opposition among Republicans, there was very considerable disaffection with which Judge Hoar sympathized.

Upon the adjournment of the Forty-third Congress he returned to his home and the practice

of the law, and some two months later he writes to Lowell : —

"Though I have determined never to speak again in public (outside of what I do for a living in my profession) I shall be at Cambridge on Commencement day and shall submit to any requirement you make. . . . I will talk about it with you at the Club on Saturday, if you are there."

This letter, written when he was just fifty-nine years old, and in the prime of his powers, contains a suggestion of what seemed to become almost a determination on his part to grow old and die early. Yet, only a month before that, he had presided at the centennial celebration of the Concord Fight, at which time President Grant was his guest. As the fourth of March, 1875, was the last day on which Judge Hoar held public office, and as General Grant and he met for the last time on any public occasion at the Concord celebration, it is proper that a word or two should be said about the final relations between the two. The firm, reticent, faithful general who accomplished his great task for the nation and ended the Civil War, the Judge held in high honor; he also liked and respected the quiet man of patriotic purpose who, called to the Presidency later, said of his acceptance, "I did not want it, and have never quite forgiven myself for resigning the command of the army to accept it. I owed my honors and opportunities to the Republican party, and, if my name

could aid it, I was bound to accept." The Judge was too high-minded to cherish any grudge against the President for asking for his resignation. Of his attitude Secretary Cox, his fellow member of the Cabinet and esteemed friend, wrote: —

"I know well how he made it a point of honor later to interpret all Grant's acts with charity, and with strongest purpose to make them consistent with good motives; but I know also that the events of the second term proved too hard even for his charity, and that he wrote me, 'I give it up; there 's no use trying to drive a nail into wood that won't hold.'"

The disappointment which Grant, the brave and true soldier, occasioned when he was put by the nation in the statesman's place, recalls what Lowell wrote, after meeting him in Washington in 1870: "I liked Grant and was struck with the pathos of his face, a puzzled pathos, as of a man with a problem before him of which he does not understand the terms."

The Judge saw that Grant was not a statesman, and that he remained blind to the mischiefs that were going on around him because of personal liking for unworthy men like Babcock, and thus made "a pretty poor President," as, in later life, he summed the matter up in a conversation with Mr. J. F. Rhodes. This was apropos of the "Whiskey Ring" scandal. But when, in the same conversation, the Judge was asked whether he felt

sure that, in these suspicious transactions, no money had stuck to Grant's fingers, he said, "I would as soon think Saint Paul had got some of the thirty pieces of silver."

Grant is reported to have said to Thomas J. Gargan twelve years after the Judge left the capital, "He was, I think, the ablest man I ever met from Massachusetts. I am told he is not popular with his own party in your state, but he is the kind of man to grapple to with hooks of steel. He is able, honest, and stands by his friends, and that is the kind of man I like."

Senator Hoar tells that once, while remonstrating with President Grant about some proposed action of his, he had said, "I hope, sir, you do not think that I would give you any advice that was not honest and sincere." Grant answered, oracularly, "I am very sure your brother, the Judge, would not." There is no question that cordial relations continued during General Grant's life.

The mention of the centennial celebration leads us to recall with what proud security Concord leaned upon her son in all times of public rejoicing and public sorrow, and the many cheerful, serious, or anxious gatherings that came between these extremes. His fellow citizen, Judge Keyes, not so many years his junior but that he could remember all the occasions, at home and abroad, in which Judge Hoar's gifts and powers were put to the test, said after his death: "I have read all

that is said and quoted in the papers about him. There is one thing which none of them have said — to me the most remarkable. He combined intellectual and executive ability in a greater degree than any man I ever knew. These powers are not apt to coexist in great measure in one man."

But the civic occasion when Judge Hoar shone forth preëminent, was on that bitter, freezing, sunless day when Concord, with fifty thousand people gathered on the damp meadows about the New North Bridge, celebrated the great opportunity, so well improved, which came to her and her daughter towns one hundred years before; when, in Lowell's words, —

> O'er those red planks, to snatch her diadem,
> Man's Hope, star-girdled, sprang with them,
> And over ways untried the feet of Doom strode on.

On that day, as the Judge said, when Daniel French's statue of the Minute-man had been unveiled, "In the presence of the President and Vice-President of the United States, in the presence of the Governor, the Executive Council, and the Legislature of Massachusetts, in the presence of the Governor of each of the New England States, we have . . . dedicated a statue to the memory of the first soldiers of the Revolution, upon the spot where the first order was given to the soldiers of the People to fire upon the soldiers of the King."

In the thronged tent, while Lowell was reading his fine ode, some ill-fastened seats fell down — even President Grant's chair toppled, but the ready wit of the President of the Day quieted the startled guests: "Have no fear, Mr. President, gentlemen and ladies," said he, "Middlesex County is underneath you."

But soon after the ill-built platform began to give way, people started to rise and talk excitedly and a panic threatened. Then the Judge brought up his reserves, and his clear strong voice rose above the confusion and noise: "*The sovereign people of America are gentlemen, and will allow the exercises to proceed undisturbed.*" Tumult subsided and danger passed away.

Ten minutes before George William Curtis, Concord's admirable adoptive son, had reached the end of his oration, the Judge, rising, asked him to pause, and said, "Ladies and gentlemen, Concord always keeps faith with Lexington. We promised to deliver the President to her at 1 o'clock, and he is therefore obliged to leave. Give him three parting cheers."

Again, at the dinner the just claims of the neighbor town were honored in the toast: "First of those who fell, in our memory of the day we celebrate, . . . I give you the martyrs on Lexington Common"; and he mentioned them by name; then as of course no Lexington man could be present, he said, "The legacy of glory will go

round and is enough for us all," and read the cordial greeting he had sent from Concord to Lexington. Yet, in private, he had indulged his wit at the neighbor's expense on the old point at issue. In Lexington's card of invitation was a slip in orthography, which the Judge pounced on with a certain pleasure, remarking, "I have always scouted Lexington's claims of having fired on the British troops. Now I am ready to admit that her citizens have murdered the King's English."

When the Judge, at that cold dinner, which he succeeded in keeping warm by his own fire of patriotism, read the deposition of the aged Hannah Leighton about her parting at early morning with her husband, Captain Davis, when, leaving his sick children, he marched to his death at Concord Bridge, — the tear in his voice brought many from the eyes of his hearers. He might well enter into the spirit of the day, when we remember how many of his forbears came to Concord Fight in the Lincoln company, of which Samuel Hoar was captain. He wrote to Lowell, "The Nineteenth of April pervades me through and through."

It is not surprising that the people of Massachusetts were not ready to admit that such a man could be spared from the public service. If he never again held office, it was not for lack of opportunity, and few years passed when he did not sacrifice his own private interests at the call of public duty. The very next year, 1876, made exact-

ing demands upon his patriotism. A passage in a letter written by the Judge to his brother at Washington, March 8, would imply that his name had again been considered for a place in the Cabinet: —

"I should as quick think of taking a place in a lunatic hospital as that of Secretary of War, and have not had the least misgiving that Grant had n't too much sense to do so absurd a thing as to offer it to me. My sixty years of life have, I hope, given me some knowledge of what I am *un*fit for."

The same letter contains other interesting passages.

"As to Senator Edmunds, do not revive any old quarrels on my account. I have had occasion to be reasonably satisfied with the way in which a large part of my old enemies in the Senate have come to look at their behavior, and am willing to let them be as civil as they choose. . . . Dana's nomination gives great and I think almost universal satisfaction here. Even General Butler told Sam yesterday that 'he thought it a good nomination.'[1]

"I do not think there is anything in the Treaty of Washington to prevent the Government from retaining the British indemnity in the Treasury. I certainly for one meant there should not be. The Geneva proceedings give more color to the other view. But I have always thought it would be

[1] This refers to the nomination of Richard H. Dana to be minister at the Court of St. James, which General Butler actively opposed and defeated.

mean to keep the money, and that the best course is to pay it out to the most meritorious claimants in succession till it is all gone. This has been the general expectation and it is better not to raise such a question unnecessarily."

In the summer of 1876, the Judge and the Senator were sent as delegates to the National Republican convention, where was fought one of the hardest battles in the history of the Republican party. James G. Blaine, whose reputation had been much impaired by the charge that he had sold his influence as Speaker to a private corporation, a charge then only partly investigated, was the leading candidate for the nomination, and was fiercely opposed by a great many strong Republicans who believed him dishonest and who sought to nominate ex-Secretary Bristow. Senator Hoar says in his "Autobiography" that neither he nor the Judge supported Blaine as candidate for the Presidency, but both voted for Bristow until the final vote, when, with the majority of the Massachusetts delegation, they voted for Rutherford B. Hayes. The Senator adds, "They differed from their colleagues in thinking that, while there were many things in Mr. Blaine's record which they disapproved, there was no evidence that he was corrupt or had done anything which rendered him unworthy of support, if he should receive the nomination of his party." In spite of certain objections which Judge Hoar had to Mr. Blaine, his

estimate of him, based upon personal acquaintance, made him disbelieve the charges against his integrity.

The Judge's feeling about Blaine is further explained by the Senator in a letter where he says, "Judge Hoar had an intimate personal friendship with Blaine and knew him through and through." It was naturally hard for him to disbelieve a man in whom he had such confidence; but Senator Hoar in later years said that he could understand how men could see in Blaine's letters evidence of dishonesty, and how they should therefore find it impossible to vote for him. It shows the public spirit of the brothers, that, in the convention, they steadily voted against the nomination of the friend in whom they believed, because they thought it unwise for the party to make him its candidate.

The autumn of 1876 called Judge Hoar again into the field. So strong a champion of honest government could not be spared when danger threatened the state. This was now chronic in the person of General Butler, whose creed and practice were absolutely opposed to every instinct of the Judge and to all the ideals of Massachusetts. He had been defeated in 1874 in Essex County, which he had formerly represented, and he now took the field in Middlesex and won the Republican nomination. Judge Hoar therefore consented to run as the candidate of the Republicans who opposed Butler.

Edward L. Pierce said of the Judge : " For forty years politicians who were plotting to suppress moral questions or to advance their own selfish scheme had to take him into account. They knew that there was in Concord a man with whom they would have to reckon, — one whose intelligence they could not blind, whose moral sense they could not tamper with. Once, when others slunk away in fear and trembling from an encounter with the most audacious demagogue of the age, he faced undaunted a storm of calumny and abuse, with a self-consecration of which there is hardly a sublimer instance in ancient or modern story."

Though the last clause is superlative in rhetoric, the sacrifice was great. The Judge had voluntarily retired from Congress and by no means wished to go again. It was against his professional interest to do so, and if elected he would have had to give up more years of his life with family and friends in his loved Concord, but the call of public duty was clear.

It had become all too evident that Grant, in his second term, was increasingly surrounded by bad influences. Among these was Butler. The Judge still had a warm personal regard for General Grant and believed in his integrity of purpose, but felt that he was often duped or led astray from sound statesmanship. " The chief duel between Butler and Judge Hoar," says Senator Hoar, " for influence over Grant related to the matter of finance.

The Judge never lost an opportunity, from his first entry to his leaving the House of Representatives, to drop seed into Grant's mind in favor of sound finance. But Butler tried to move heaven and earth — and did move hell — to get Grant to sign the inflation bill."

The appointment of Simmons, a creature of Butler's and a low politician, to be collector of the port of Boston in 1873, against vigorous opposition from a large majority of the Massachusetts delegation, the Governor and many of the most eminent men in the state, had increased the alarm concerning Butler's malign influence. Warned by his recent defeat in Essex, he had promised the Republican party to abandon his "*fiat* money" doctrines (a pledge which he broke), and won in the convention. It is not strange that many of the outraged Republicans bolted and appealed to Judge Hoar to be their champion. He felt with them that the nomination of Butler was intolerable and accepted the disagreeable duty. In doing this he taught many young men of Massachusetts that their allegiance was due to their country rather than to their party, and that if the party nominated a corrupt man for office, they ought to oppose him. He would not ask another to do what he would not do himself. When they applied his teaching and followed his example a few years later, he did not see with their eyes, and was perhaps a little inclined to think that

they should follow his judgment as to the existence of any emergency which justified such action.

Charles Francis Adams, Jr., wrote: "The result only demonstrated once more the force of party discipline in popular elections." Judge Hoar had 1955 votes and was defeated by a vote of nearly six to one, Butler having 12,000 votes. It should however be said that the people, not yet appreciating the failure of corrupt rule by cheap adventurers who misled and used the ignorant freedmen of many Southern states, and alarmed by the admission of many reconstructed Confederates to Congress, were honestly deceived by Butler's proclamation that he went to fight the Southern Brigadiers in Washington.

An especial reason for the Judge's anxiety he told in his later years to Mr. Rhodes, the historian. He said that during the outcry over the nomination of Simmons, when the Judge and Butler were in Washington, the latter said to him, "I have a hold over Grant and he dare not withdraw Simmons's name." The Judge, who still continued friendly relations with the President, went to him in private and urged him to withdraw so unfit a name, but to no effect. Then, hoping, no doubt, for an indignant denial, he squarely said to him "Butler says he has a hold over you." Grant set his teeth, then drew down his jaw, and without changing countenance looked him in the

eyes, but said no word. A long and painful silence ensued, and the Judge went away.

Judge Hoar threw himself into the campaign and spoke frequently, assisted among others by several young men who were novices in politics, but who felt the importance of defeating General Butler if possible. It was at Leicester during this contest that the Judge, in the course of a speech, said that it was a source of consolation to him that in his native county of Middlesex it had been found impossible to assemble a convention which would make the nomination of Butler unanimous. "Yes, and how many opposed it?" said a sneering opponent in the audience. "I don't remember," said the Judge. "Would you like to know?" came the next question. "I should," said the Judge. "Well, there were just ten," was the reply. "Precisely the number of righteous men that would have availed to save Sodom," was the instant and complete rejoinder.

It is interesting and amusing to find how, half in fun and half in earnest, the Judge was constantly expressing his antipathy to Democrats, and even to Independents. As late as May 10, a few months before he was going to lead an independent movement, we find him writing to his brother about his argument on the impeachment of Secretary Belknap. "Your name and praise is in all the churches, and even in 'the synagogues of Satan,' to wit: the Democratic and Independent newspapers."

The following September, when his old friend Charles Francis Adams, who had helped with him to found the Republican party, was nominated for governor by the Democrats, he wrote his brother: —

"I was asked to-day what I thought of the Democratic nomination for governor. I replied that it reminded me of a 'little story': —

"The late Judge Warren said that when he began the practice of law in New Bedford, he was employed to try a case in the Court of Common Pleas by a man of not very good reputation. His client gave him a list of witnesses by whom he expected to prove his case, but he had not seen them until he sat down in court to try it. When he called them to be sworn, to his consternation there came forward eight or ten of the sorriest-looking ragamuffins and topers that were ever collected. He turned to his client, and whispered, 'For God's sake, haven't you anybody else than these fellows?' Just then the door of the court-room opened, and Mr. William Rotch, one of the wealthiest merchants and most respected citizens of the town, walked in. 'Call Mr. Rotch,' whispered the client in reply. 'Why, what does he know about your case?' 'Oh! he does n't know anything, but he will give a *kind of air* to the rest of 'em.'"

For the rest of his life Judge Hoar was to have the happiest of family life among his friends and

neighbors, — for the town, in those pleasant simpler days, seemed but a larger family, — enjoying the practice of his profession, free from office and from public duties except to his town, his loved college, and those which might be involved in the Boston Bar Association, of which he was a founder and soon after president. Conscious that he had passed his physical prime, and never in quite comfortable health, he seems to have felt some anxiety in returning to the practice of law. This appears in a letter which he wrote to a friend when some malevolent politician had published a charge that he had made a gift to the President: "I never made Grant any present whatever in my life. . . . The fact is that a large family, and the giving up most of my active life to public service more honorable than lucrative, have left me little ability to make presents to anybody, and the burdens and charities of the war took all and more than all I could spare, so that, however inexplicable my appointment as Attorney-General may have been, it was not bought."

His friend Mr. Francis E. Parker had engaged an office for him in Pemberton Square, and it is said that when the Judge learned that the rent was one thousand dollars a year he stood aghast; but Mr. Parker told him he need have no fear, that he would have all the lucrative practice he desired, and so it proved, but for one abatement, mentioned in this clipping from a newspaper of that time: —

"I suppose he must have an income from his legal practice that amounts to at least $25,000 a year, easy. He is somewhat of an old fogy in the matter of charging. He is a very light charger . . . too old-fashioned for his own good. He is probably as able a jurist as ever lived . . . in New England, and is, by all odds, the ablest man at the bar now. . . . Why, if Butler or Evarts, or some of those New York fellows were making charges for the opinions that Judge Hoar gives from day to day, they would charge $1000 at least, where he charges . . . a few hundred dollars. I tell you that his charges are so moderate that many corporations go to him for opinions, when they don't really need them. Judge Hoar's opinions are not 'cheap' in any other way, though, and you can pin your faith on them every time."

Chief Justice Field said: "He had all the law practice he wanted; it was of the best kind, and took as much of his time as he wished to give to his profession. He would not, I think, have enjoyed an overwhelmingly large practice, for he wished time for conference with his friends, for meditating upon many things, for enjoying many things, and for reading what he chose.

"His arguments were like his opinions,—not long, very clear, remarkably strong in analysis, and persuasive in their sound sense. He used great directness and simplicity of statement, and he relied on his wit to point or enliven the argument."

The Presidential campaign of 1876, with its doubtful result, left the country face to face with one of the greatest crises in its history, and the Judge was, of necessity, deeply interested in the outcome, but his interest was expressed in private letters and conversations of which no record remains. In a letter of January 29, 1877, congratulating his brother on his election to the Senate of the United States, he says: "I think you may take this as the indorsement by the state of your Presidential settlement, which, though without constitutional authority, is a practical American device to get over a difficulty otherwise insuperable, and, like Jefferson's purchase of Louisiana, is to be upheld by the agreement beforehand and the acquiescence afterwards of the whole people who may thus modify their Constitution if they choose."

Of his brother's election he says: "It is the most important declaration of the state on the right side since Sumner and Andrew.

"I am the more happy that it proves that my campaign last fall has done no harm, though Simmons and Butler have strained every nerve to defeat you."

A few days later, under date of February 1, he writes to his brother again: "I have learned that Butler devoted himself with all his power to defeat your election, sending for men to his office, and employing every agency he could think of, and then with his chronic propensity to impudent

lying, told reporters that he took no part in the fight, that it was no quarrel of his, and that if it had been, the result might have been different."

Judge Hoar maintained in private life a watchful interest in public affairs, and as soon as President Hayes was inaugurated began to strive for the emancipation of Massachusetts from Butlerism. March 9, 1877, he writes to his brother: "Now can we *purify* the public service by a change in the Boston Custom House?"

March 12, 1877, he writes again: "Everybody (whom we care for) is delighted with the inaugural, the Cabinet and the way things are working with Wheeler, Evarts, McCrary, Devens, and Schurz; thorough-going Massachusetts Republicans ought to be contented with the executive end of the government, and it seems as if Hayes would be able to accomplish what Grant had so fine a chance to try eight years ago, and which I tried so hard to have him attempt.

"I receive quantities of letters asking for help with you and Evarts in getting offices, but respectfully decline to avail myself of (or rather to transfer to other people) my personal relations.

"The cleaning out of Simmons however seems to me an obligation to public morality and to come exactly within the President's line of policy, — as a man who has used his official power exclusively to further one man's personal ambitions and hates, and as owing his own appointment to the assump-

tion of executive power by a member of Congress. He has got rid of almost every respectable man in the Custom House, who would not wear his master's collar. . . . The papers say that Butler has told the President that he had no axes to grind, no papers to present, and that he should support the Administration, which being interpreted is that he has filled every Federal office accessible to him with his creatures, and wants to stipulate that they shall not be disturbed."

The public service still sought him, and a few days later, on March 21, Mr. Evarts wrote to him a letter from which the following is taken : —

"At the moment I have the particular object of stating to you that the President has decided to send a commission of prominent public men to Louisiana to ascertain the prospects of, and the obstacles to, securing a *single* state government in Louisiana. Everybody desires that you should be one of this commission, and your proposed associates would be Vice-President Wheeler or (if he should be unable to go) President Woolsey, Judge Charles B. Lawrence of Illinois (who was supported for the Senate against Judge Davis), Governor Brown of Tennessee (a Democrat), and Harlan of Kentucky, Bristow's friend.

"This commission will go under public instructions and its examinations and conciliations will be of a public character.

"The commission will be desired to go as soon

as can be arranged and to return as promptly as its objects can be secured. The service is primarily a patriotic one, but it is expected that provision will hereafter be made for the expense of the service.

"I hope you will approve this measure, and will join in it, for without you we shall miss its best value and efficiency in the public esteem."

This offer he was unable to accept. On June 26 he was offered the position of counsel for the United States before the Fishery Commission. Mr. Evarts wrote: —

"Both Mr. Foster and Mr. Kellogg write me urgently that you ought to undertake the service. They both understand your aversion to the proposition, but as usual with you, they think you should sacrifice yourself for the public good. . . . I hardly suppose you will entertain the proposition, but could not refuse to take your solid sense on the subject."

The Judge did not feel that it was his duty to undertake this service, which involved six months' work and a considerable absence from home, so this offer was declined.

In January, 1878, Mr. Blaine made a speech to the Senate on the occasion of presenting a statue given by the state of Maine to be placed in the collection at the capitol, and in the course of this speech attacked Massachusetts very sharply on account of her attitude during the War of 1812.

Senator Hoar made an extended reply, saying among other things (in allusion to the fact that Massachusetts had opposed the nomination of Mr. Blaine for the Presidency in the last Republican National convention): "I regret that certain recent historic judgments of the people of Massachusetts have so far disturbed the Senator from Maine that he feels called upon to make them bear not only their own sins, but the sins of their ancestors." The speeches were printed in the morning papers of the next day, and shortly afterward a young lawyer asked Judge Hoar how he liked his brother's speech. He replied that he liked it, but added: "If I had been there, I should not have made exactly that reply. When Mr. Blaine ended, I should have risen and said, 'In reply to what the Senator from Maine has said about Massachusetts, I am not aware that I have anything to say now, but I desire, with the unanimous consent of the Senate, to introduce a bill giving to the Senator from Maine a life pension as the last survivor of the War of 1812.'"

The letter to his brother from which the following extracts are taken was written after this incident and is dated January 29, 1878. The displacement of Simmons is still uppermost in his thoughts, for he says: —

"If Simmons is reappointed I think my interest in this administration will be at an end, and so will enough of others in Massachusetts to leave

a pretty poor show ; but I cannot believe such a mean result is to happen.

" As for being satisfied with you, the two things that have helped to keep me alive for the last week have been the nomination of Sargent as postmaster at Methuen, and your reply to Blaine, who, it seems to me, must be getting insane. I wonder if he thinks that road leads anywhere."

Sargent's nomination interested him because it was the reappointment of a good officer whom General Butler was trying to displace. His efforts against Simmons were successful and the Boston Custom House was redeemed.

He continued to devote himself to his profession, but his health was not good, as is shown by a letter written June 5, 1878, from which the following passage is quoted : —

" Your inference that I am well, because I tried a long and tough case, is, I am sorry to say, not justified by the facts, though I am better than when I last saw you — but I have struck work till September, and intend to devote myself to getting well. . . .

" The Democratic landslide does not disturb or alarm me. It is going to do us no harm, unless something more comes than is yet visible."

In 1879 he was chosen president of the Boston Bar Association, which he had helped to found in 1876, and he presided at its dinner. His little speeches on that occasion made it especially bril-

liant, and of all that was said by the various speakers only what fell from his lips has dwelt in the memory of at least one among his listeners. He began by alluding to the difficulties of his position and freely translated for the occasion, "*Nullum tempus occurrit Regi*" as meaning, "The King does n't have any kind of a time."

It was thus that he introduced Sidney Bartlett, the oldest member of the bar in active practice:—

"And now, gentlemen, I have the great pleasure of introducing to you a man who has enjoyed the singular felicity of being the leader of this Bar for fifty years. Of him may be said what was said to the old French lady, who in extreme age still preserved much of the charm and vivacity of her youth, and who said to an old admirer, 'Pray, how old do you think I am?' 'Ah!' said he, 'Madame, you are twenty,—for the fourth time.'" He made the dinner memorable among occasions of this kind.

The election of 1880 brought Mr. Blaine into the Cabinet as Secretary of State under President Garfield, and the early months of the administration were marked by the contest over the New York offices, which led to the resignation of the New York senators, Conkling and Platt. Apropos of this incident, the Judge wrote to Mr. Blaine, alluding to a passage between Blaine and Conkling when both were members of the House, during which Blaine spoke of Conkling as "a turkey cock":

MY DEAR MR. BLAINE, — In accordance with the time-honored custom of our Puritan ancestors, the demise of the cock turkey has been followed by a New England Thanksgiving.

When the nomination of Mr. Blaine to the Presidency led a great many prominent Republicans, like George William Curtis, President Eliot, Carl Schurz and others, including the Judge's sons Samuel, Charles, and Sherman, to leave the Republican candidate and support Grover Cleveland, the Judge adhered to the Republican nominees, and in a speech at Worcester on July 22 of that year asserted his firm belief in Blaine's honesty and praised his sense, versatility and resourcefulness. He was much troubled that neither of his sons could stomach the nomination, but, as he had done in the Free-Soil and again in the Butler time, they "bolted," and voted for the Democratic candidate. After the war, in spite of the valiant and patriotic service in the field and at home of the "War" Democrats, the Judge's feeling was always that expressed by Horace Greeley of that party before by a strange accident he became their candidate: "I do not say that all Democrats are rascals, but it is indisputably true that all rascals are Democrats."

Sherman Hoar told a friend that, on the day after the election, when the papers showed Blaine's defeat, his father admitted that there had been

some reasons why he was an undesirable candidate, or words to that effect. But whatever faults might be found in the dominant party, and in spite of the sad scandals that began to appear, especially during Grant's second term, its glorious record of saving the country in the long years of utter peril, and of wiping from it the stain of slavery, commanded thereafter the Judge's affectionate allegiance, and while he wished to keep it pure, he deplored any departure from it, and had no patience with the supposition that any real good could come from the other side. His attitude at the time was thus described by his brother, Senator Hoar: —

"He never took our Mugwumps as seriously as I do. I always treated them as persons who were giving their support to great public crimes and politically were to be treated accordingly. Rockwood had for them a sort of amused tolerance, and, where they behaved well and had some personally agreeable qualities, liked to see them and associate with them. I have no doubt that if he had not withdrawn from public responsibilities, and had, these last few years, felt any obligation on his part to take a personal share in saving the country from disaster and in promoting good results, he would have felt about them a good deal as I do. While I always agreed with my brother in thinking that they never did or were likely to do much political mischief, I think they have been quite mischievous, especially those of them who

had what is called high social position, or had some literary capacity, in perverting and misleading young men who might otherwise be useful to the country."

So might Daniel Webster have spoken of Samuel Hoar and his sons in 1848.

In this connection should be quoted the Judge's remark in 1884: "I have no objection to the Mugwumps going out, but they need not slam the door after them," and his reply to one of them who was inveighing against the corrupt men who had attached themselves to the Republican party: "Remember that a ship is not steered by its barnacles."

The campaign of 1884 found him nearly threescore and ten, and from that to the end he led a peaceful life, never travelling far from Concord, practising law in Boston, serenely enjoying his family and his friends, taking a keen interest as wise critic and counsellor in the political affairs of the state and nation, always ready to do his duty in his town and church, until 1887 president of the Overseers of Harvard College and always a welcome figure at its festivals, and until the last a constant attendant at the meetings of the Saturday Club. It was the serene evening of a well-spent life, and he had in abundant measure "all that should accompany old age."

Among the more prominent cases in which he was concerned during that time was the case of

Egbert C. Smyth against the Visitors of the Andover Theological Seminary, which he argued on October 14, 1890.

Professor Smyth had maintained and inculcated doctrines which were more liberal than the Visitors approved, and they removed him from his professorship. He appealed to the Supreme Court of Massachusetts, and Judge Hoar was retained as senior counsel for the Visitors. It was in some respects a peculiar position, since it compelled him, a prominent Unitarian, to take ground against the professor of liberal views and in favor of those who adhered to the strictest tenets of Orthodoxy, with which he had no intellectual sympathy. He felt the humor of the situation, and could not refrain from at least hinting at it.

Thus at the outset of his argument he said: "There is, as I understand it, no question of theology to be determined by the Court. I should feel very much embarrassed if I thought there were. If I were to undertake to discuss and point out the differences between the doctrines of the Andover Creed and the publications of Dr. Smyth, I should feel like the Scotch old woman who, when asked if she understood the sermon, replied, 'Wad I ha'e the presumption?'"

He rested his argument upon the proposition that the founders of the Seminary attached to their foundation the condition, that the professors who taught should declare their faith in a certain

creed, and should teach according to it, saying: "When the morning stars sang together, the Andover Creed, in these people's estimation, was the song." This proposition he illustrated as follows:—

"Suppose somebody had founded an asylum for the blind, and the founder had come to the conclusion — not perhaps sufficiently considering the scriptural caution about 'the blind leading the blind'— that it was best to have the instructors and teachers and managers all themselves blind people; he had appointed what they had to do, and thought that their sympathies and their influence on their blind pupils would be better, and therefore he provided an institution, to which his money was to be given, to educate the blind, and with a provision that nobody but the blind should be professors or teachers in it. And suppose that were carried out, and having been for sixty or seventy years in full operation, the asylum having a board of Visitors to see that that provision was carried out, and one of the teachers should come to one of the Visitors and say, 'I have been experimenting on my own case, I have got something which has made plain this difficulty; an Arabian doctor has prepared and brought with him a drug, and I have been rubbing it on my own eyes and I already begin to see a little. I see men like trees walking. I think I may recover my sight. I want to try it on the pupils. Their

deprivation, like my own, appeals of course to my tenderest sympathies, and I want to do it.' Says the Visitor, 'My friend, if you can restore the sight of a single pupil, you ought to do it. Do it, in God's name. If you can get your own, I am delighted to have you. It is very much better than your present condition; but I must say to you that the minute you begin to *see*, you have got to leave this establishment.'

"It would not follow because another creed was much better, that it can be allowed here. Touchstone said of Audrey, 'a poor thing but mine own.' This creed is what these founders believed in."

He quoted "a wise and witty clergyman" as saying: "This whole Andover question seems to me to be merely an instance of the right man in the wrong place," and said, "The expression puts in a nutshell what I think may strike your Honors and strike a large number of the community as true."

The argument was strong and convincing, but his clients did not think his illustrations felicitous, and doubtless thought, if they did not say, "Call you this backing of your friends?" The whole argument is preserved, but these passages are illustrations of the Judge's method, which pleased a great many at the time. He did his duty to his clients, but one may be pardoned for suspecting that his tongue at intervals trembled on the edge

of his cheek. It should be added that he gave the very considerable fee which he received in this case to the Unitarian Association, an apology perhaps for appearing on the wrong side.

CHAPTER VII

PERSONAL REMINISCENCES

JUDGE SULLIVAN, who studied law in Judge Hoar's office during the last years of his practice, tells a story which will commend itself to lawyers. He says: "I helped him prepare a brief for the full bench, and as he was going to court, I said, 'I suppose I can be of no use to you during the argument'; to which the Judge replied, 'Well, you can at least sit by me, and hate the other side!'"

Judge Allen says that once some lawyer with a shady reputation had taken a high moral tone in commenting on the conduct of some party on the other side, and Judge Hoar remarked afterwards that he was reminded of King James, in "The Fortunes of Nigel," who said, "It was grand to hear Baby Charles laying down the guilt of dissimulation, and Steenie lecturing on the turpitude of incontinence." The circle of which the Judge was a member was "letter-perfect" in the Waverley Novels.

Judge Allen also tells the following: "In earlier days, I suppose he was not in the habit of suppressing a keen retort, if occasion called for it. But in later years there was a change in this respect. I well remember one instance while I was sitting

with the full court as judge, and he was counsel, and his opponent went out of his way to make some statement which would naturally invite a caustic reply. I observed the expression of his face, and expected when his turn came to hear something pungent. But in his own argument he made no allusion whatever to what had been said. He argued the law points and sat down. I have an idea that the humor of the situation (as his opponent was by no means his equal) overcame all wish to make a stinging reply. But, from whatever reason, it is quite certain that in later years he indulged less in that kind of fencing than formerly. I presume the above is but one of many similar instances."

A lawyer associated with him as his junior gives, as his distinguishing trait in advocacy, "his power of reducing his own case and his opponent's case to one or two positions, and presenting these with a sharp vividness which burned them into the minds of the court or jury. This was, in fact, but one exhibition of the power which lay behind his wit. . . . In the court in Washington, where we carried with us a long and tedious record of dull facts, a few flashes from him illumined the whole case, like lightning in a black landscape."

To this estimate should be added the influence of his known *character* and the force, range, and often the affectionate pathos of his speech. And

in it the literary quality, sure to be there, was in exactly right proportion to the expression of human feeling, — adorned it, but left it the leading place. The Judge's memory, stored with the best of literature, classic and sacred, stood ever behind him, furnishing him lustres for his public speech. It is said that, years ago, in the palmy days of the old Middlesex Hotel at Concord, after some public occasion, a frequenter of the bar-room coming in was much amused to see the well-beloved Samuel Staples, then manager of the hotel and keeper of the jail close by, sitting by the window and reading the Bible. "Well! that 's new business for you, ain't it, Sam?" said he. "I was looking to see if I could find some of those splendid quotations the Judge is always bringing in in his speeches," was the answer.

Another who knew him well, said: "He could see farther into a case in five minutes than any man I ever knew."

William G. Russell, the eminent Boston lawyer who had known him through all his life, said: "Though he was well read in the law, and in the best that has been written of old or modern times, and was never at a loss for an authority in point, or an apt illustration from history or romance, or from proverb, psalm or parable from the Book of books, yet for his law and his conduct, he relied, and safely relied, chiefly on that strong, native, sound common sense with which

he was born and which he applied to cases, to men and to affairs of life. He had more than New England wit and wisdom. He had the stern, uncompromising New England conscience."

Mr. Russell held the Judge to be a notable type, not only of New England's wisdom, but of its wit. He said: "It is difficult to define it, but there is a New England wit, a Yankee wit, if it please you, as different in its type from English or Gallic wit, as is the flavor or aroma of our Baldwin apple from that of the southern olive."

Some examples from his childhood up have been given, but others, too good to be lost, must find place here.

Says another friend: "I know none of the many anecdotes of the Judge's ready wit that shows better than the following how instantly and surely it worked. The morning train from Concord was sliding into the Boston station, perhaps because of frost on the rails rather faster than usual, and we, in true American fashion, were already filling the aisle of the car and pressing towards the door. I happened to be just in front of the Judge, who was talking to me, and had just reached the door, when the train brought up on the buffer with a shock that threw each passenger against the one in front of him, the Judge against me. 'One last bumper at parting. Good morning,' said he, as, disengaging himself from me, he stepped out on to the platform."

A niece of the Judge tells that one winter day, when the sleighing was fast going, he drove down with her to Mr. Emerson's and asked to speak with him at the door. When their talk was ended and the Judge was going, Mr. Emerson remarked on the gayly painted sleigh. "As you said in your poem 'Brahma,'" remarked the Judge, "this is a case where

"The red slayer thinks he slays."

At a bar dinner at which he presided, the Judge called attention to the idle ceremony through which the people of Massachusetts go every year, which they call electing a governor, "who however has no real power, as is shown by the language of the proclamation announcing his election, which runs somewhat as follows: 'And, from the return of votes, it appears that Oliver Ames is elected Governor, and all good people of this Commonwealth are required to take notice thereof, and *govern themselves* accordingly.'"

At Harvard's two hundred and fiftieth anniversary, Mr. James C. Carter introduced Judge Hoar as the last speaker at the Law School dinner. When the applause of his greeting allowed him, he began thus: —

"I expected, Mr. President, that you were calling on me as a reminiscence — a capacity, which, on reflection, after all that I have heard to-day, I am tolerably well qualified to fill. I feel a good

deal like the old friend of mine who went to a public dinner on one occasion and they said he was a most remarkable old gentleman, that before dinner he remembered General Washington, and that after dinner he remembered Christopher Columbus."

Cities contended for the honor of having been Homer's birthplace. So Boston, New York, Concord, and Windsor, Vermont, have striven concerning the author of a remarkable and multiple joke, and at last London entered the lists. In May, 1857, Mr. Evarts wrote to his cousin, enclosing two newspaper clippings, respectively from the New York "Evening Post" and the Boston "Transcript," [1] concerning the story which had been ascribed to both of them and to an earlier wit, as follows: —

"I suppose there is no help for the matter between us, but it would make a funny *jeu d'esprit* to give the true story of its double parentage and

[1] From the New York *Evening Post:* "'Render unto Cæsar,' etc. The excellent *bon mot*, which the Detroit *Advertiser*, in a paragraph quoted yesterday, attributes to Judge Hoar of Massachusetts, is the property of Mr. William Evarts of this city, a cousin of Judge Hoar's. In a toast at a New England Society dinner, Mr. Evarts described the three stages of the enterprising Yankees, as these: 'First, to *get on;* second, to *get honor;* third, to *get honest.*'"

From the Boston *Evening Transcript:* "Lately, at a dinner table in Massachusetts, a gentleman remarked that X, who used to be given to sharp practice, was getting more circumspect. 'Yes,' replied Judge Hoar, 'he has reached the superlative of life. He began by seeking to get on; then he sought to get honor; and now he is trying to get honest.'".

of the humility with which I asked, and the generosity with which you granted, the entire honor of its production upon its first public presentation. You remember the occasion, the Linonian celebration at New Haven ; I have no recollection of ever having used it since in public or private, and it is, therefore, a mistake to refer it to a New England dinner."

Soon after, Mr. Charles Eliot Norton told the joke as Judge Hoar's to Mr. Justice Willes, who was visiting this country, but this gentleman instantly said that he knew it to have originated with Lord Chelmsford, and scouted all other claims. A few months later, however, he wrote to Mr. Norton as follows:—

"I am bound to admit that the 'onner' of the excellent *bon mot* of Mr. Hoar does not belong to old England. Lord Chelmsford, whilst thoroughly appreciating the positive, comparative and superlative merit of the witticism, does not claim its authorship."

Still later, some one said that the joke was old, having been made some years before by an English lawyer whom he named. It is to this latter claim that Mr. Evarts refers in a letter to the Judge, in May, 1873. After speaking of public matters, he says: —

"But what are all earthly distinctions when two such men as you and I, having joined in the labor and divided the honor of a joke of national

reputation, find ourselves exposed as robbers of the fame of a dead Englishman?"

Miss Ellen Emerson probably stated the real facts as follows: "Judge Hoar told me that he and Mr. Evarts were talking together one day about a lawyer, bright, but of doubtful practices, who had lately come to some distinction. Mr. Evarts said, 'Yet he seems to have been getting on lately.' The Judge responded, 'Yes, more than that, he's been getting honor'; and Mr. Evarts instantly added, 'And perhaps now he'll begin to get honest.'"

The following letter is characteristic: —

My dear Russell, — I have your note, saying that you wish to present the judges a photograph of me for their apartments in the new court house, and inquiring which is the best likeness. Sam and Sherman think my best picture is the one which hangs in the Essex law library. My own opinion, however, is that a better picture is the one that was taken about the time I resigned from the Supreme Court, and before my countenance had become characterized by the melancholy which has settled upon it in contemplation of the fellows who succeeded me there.

George Herbert well said, —

> Wit's an unruly engine, wildly striking
> Sometimes a friend, sometimes the engineer;

and it was so with Judge Hoar's; it recoiled on him often and gave offence; yet there was no malice in it, for he, not being thin-skinned, usually was unaware that it was so. When the papers had published many criticisms on him for inconsiderate and cutting speech, one of his kin wrote: —

"Rockwood is very much surprised and hurt at all this. He has always felt himself to be, in the world, a most affectionate father of a family. He had no idea that he had created such a feeling. And yet I own that what he said of his brother Frisbie is true of him, — 'When he sees a fool, he knows him, and cannot resist the pleasure of telling him so.'"

The Judge once spoke of sinners as "that large and influential class in the community." He frequently happened on them and they were apt to hear his views intelligibly expressed. Ex-Governor Claflin, after the Judge's death, said: "I think too much was said in the 'Tributes' about the offence taken by senators and other politicians who came in contact with him. It was not the manners, but the matters. He studied the best interests of the country."

But concerning the occasional woundings on social occasions, Mrs. Fields said truly: "An opening for his wit he could not bring himself to let slip. It would seem to him a crime. 'Opportunity is fleeting'; he shot his shaft; the dazzle of the

wit would hide from him the mortification which the other party tried not to show."

The Judge might be likened to "Isrel" in Lowell's poem, "The Two Gunners."

> "Don't fire," sez Joe, "it ain't no use,
> Thet's Deacon Peleg's tame wil'-goose";
> Sez Isrel, "I don't care a cent.
> I've sighted an' I'll let her went":
> *Bang!* went queen's-arm, ole gander flopped
> His wings a spell, an' quorked, an' dropped.

The sudden, not unkindly laugh that came after an utterance of edged wit showed that he was not inhuman, but, being differently organized, did not appreciate how thinner-skinned people might suffer and resent.

Judge Chapman testifies to a marked change in the matter of severe retorts in court after the Judge returned from Washington, instancing a case where he forbore utterly to pierce his opponent's defenceless side after great provocation, and quotes Burns's lines: —

> What 's done we partly may compute,
> But know not what 's resisted.

On one occasion, however, he had the fun of availing himself effectively in court of his primogeniture at the expense of his brother, in his own city. At a hearing in Worcester, where Senator Hoar lived, the Judge appeared as counsel for the Boston and Albany Railroad, and the Senator for the city. The appearance of the two distinguished

brothers on opposite sides of the case drew out large numbers to the hearing. During the hearings, Senator Hoar having made certain statements, his brother, the Judge, in beginning his answer, instead of using the usual formula, "My brother says," started in with, "As my little brother has said."

Let it be said, in passing, that the relation between the brothers was one of affection, trust and respect throughout. Senator Hoar spoke of the Judge as the kindest and most generous of brothers. Hon. Joseph H. Walker tells of journeying in the cars with the Senator, and, on reaching Boston, finding that he was to visit his brother, he asked permission to go with him and pay his respects. "The meeting of these venerable men," he says, "was like that of guileless children, and my love and regard for both of them was intensified by the pleasure of the occasion."

Yet this was but the manifestation in the family of the really affectionate and kind impulses that were in Judge Hoar. Although he had a face that inspired awe, he had within the milk of human kindness. Stern as he looked, eyes, ears and hand were open to an unusual degree where there was need. Help was quietly and wisely given. Many of the younger generation recall his visits of tender sympathy when death had entered their doors, — especially the death of children moved him; and also that he took the pains to come with

a friendly God-speed or a gift on notable occasions of their lives, — journeys, engagements, weddings. He treated his servants with consideration and respect.

On the morning when Mr. R. W. Emerson's house was burned, the Judge did not hear of it until he reached the railroad station on his way to Boston. He immediately went to the insurance office, to learn the amount of the policies; to the bank, to know the state of his friend's account, and added a generous deposit to help in immediate needs; then he sought Mr. and Mrs. Emerson at the house of Judge Keyes, where after their alarm, fatigue and exposure they were being cared for, to offer his sympathy and help. Later, he went down and swept the barn-floor, seeing that the furniture was to be stored there. Soon after, when the Judge was made by Mr. Emerson's many and generous friends their ambassador with the delicate mission of presenting their affectionate tribute to aid in rebuilding his house, he sought his friend, then harbored in his ancestral home, the Manse, and did it as stated in his own words, quoted from his letter to Dr. Le Baron Russell: —

"I told Mr. Emerson, by way of prelude, that some of his friends had made him treasurer of an association who wished him to go to England and examine Warwick Castle and other noted houses that had been recently injured by fire in order to get the best ideas possible for restoration, and

then apply them to a house which the association was formed to restore in this neighborhood.

"When he understood the thing, and had read your letter, he seemed very deeply moved. He said that he had been allowed, so far in life, to stand on his own feet, and that he hardly knew what to say. . . . I told him that this was the spontaneous act of friends who wished the privilege of expressing in this way their respect and affection, and was done only by those who thought it a privilege to do so. . . . I am glad that Mr. Emerson, who is feeble and ill, can learn what a debt of obligation his friends feel to him, and thank you heartily for what you have done about it."

Seeing how strongly his friend's scruples were working on him, the Judge determined to carry the matter through and said: "Well, what are you going to do about it? The money is in the Concord Bank to your credit." Mr. Emerson took the matter under consideration, but in the end could only surrender to his friends, who claimed that they were trying to pay a debt.

He asked the Judge to show him the list of his benefactors. When it came, he was astonished. He wrote to the Judge: —

It cannot be read with dry eyes or pronounced with articulate voice. Names of dear and noble friends; names also of high respect to me, but on which I had no known claims; names too that

carried me back many years, as they were friends of friends of mine more than of me, and thus I seemed to be drawing on the virtues of the departed. Indeed, I ought to be in high health to meet such a call on heart and mind, and not the thoughtless invalid I happen to be at present. So you must try to believe that I am not insensible to this extraordinary deed of you and the other angels on behalf of

Yours affectionately
R. W. EMERSON.

One of the Judge's classmates, dying in 1853, left a daughter. She said that every Christmas after her father's death she received from Judge Hoar a present with a charming note, until the Judge himself died, but she never saw him in her life.

When, in 1885, at the Commencement dinner, the Judge was called upon to speak for and to his class on the fiftieth anniversary of their graduation, he spoke with affectionate eloquence. This passage should be preserved: —

"We should rather like to hear what the old lady whom to-day we have come back to look up to, and to admire, thinks of us. Her smile is sweet as she sits in stately beauty and lets the children talk. Is it not possible for eager ears to catch a few words from her lips? I think I hear the maternal voice: —

"'Well, my sons, I am glad to see you once more.

How the years roll by, to be sure! Who would think it was fifty years since I put you down from my arms and set you on your own feet. The time seems short to me, though it has told pretty seriously upon you. As I look you over, I am sorry to see how little of what civil gentlemen are sometimes pleased to call my "immortal beauty" I have been able to transmit.

"'You have not been specially eminent as a class. If any of you have rendered conspicuous public service or helped to make the world better, I am glad of it; but no less dear to me are those of you whose lot has been hardship, disappointment or poverty, and who have still kept themselves to the end what I most wish my sons to be, worthy and honorable gentlemen.

"'I am glad to remember to-day that, as a class, you have come to see me when you could; have stood by me and helped me when I needed help; have loved one another and have loved Harvard.

"'And now you see that I have all these youngsters to attend to, and it's about your bedtime. Good-night.'

"*Ah! Alma Mater carissima*, may the blessings and gratitude of the class be with you to the end of time!"

Those who knew him can recall the vibrating pathos of his voice on occasions like this, the pauses for safety showing his tenderness and his

strength; for he would not choke or break down, though moved to the core.

A year or two later, the Judge wrote to Professor James B. Thayer of Cambridge, who urged him to attend the Phi Beta Kappa meeting and speak: —

SHARON SPRINGS, N. Y., *June* 17, 1887.

Your kind and persuasive note has been forwarded to me at this place.

I acknowledge the jurisdiction of the Φ. B. K. to be co-extensive with space and time, and if I were to take the wings of the morning and dwell in the uttermost parts of the sea, it would not surprise me, at about this time of the year, to find a note from the President reminding me of the annual dinner. The motto of the society is, as it is the privilege of the initiated who wear its medal to remember, "*Sic itur ad astra.*" Having attained the grace indicated by its first word to some extent, I am sent here by physicians to prevent if possible a premature and too speedy application of the three words which follow. In fact the doctors recommended me to try sulphur baths, for which this resort is famous ; but I have had a painful suspicion, remembering my connection with the Andover controversy of last winter, that there may be a covert design to give me a slight foretaste of immortality. . . .

As to helping you to secure the attendance at

the dinner of my valued friend, Mr. J. M. Forbes, I have been some weeks away from Massachusetts and so have not seen him, do not know where he is or what he is about. Indeed, all I have heard of him for some time was an astonishing and alarming statement concerning him which I read in a Boston newspaper yesterday. That paper informed me that a celebrated ship-builder at East Boston had just built for him a steam yacht, and added, "its dimensions are those of its owner." Looking farther along in the article I found those dimensions to be 116 feet in length — 28 feet beam — and 10 feet in depth. Now when Mr. Forbes was a Republican, I always thought him a man of great breadth and as deep as most men, but I never supposed him capable of going to such extreme lengths. It looks to me like a remarkable Mugwump development. At any rate, if the newspaper account is to be believed (and what can you believe if not newspapers), I advise you to secure his attendance at the Φ. B. K. dinner, at all hazards, by all available means, and the success of the dinner is assured. In short, I cannot come, but you have my best wishes for Mr. Forbes.

In 1890 his son Sherman was nominated for Congress on the Democratic ticket, and was elected a few weeks before the Judge's golden wedding. In a basket of flowers, affectionately

sent by Colonel Henry Lee to the Judge and Mrs. Hoar on this occasion, lay this asp, — though, unlike Cleopatra's, no venom remained from its momentary bite, — an extract from a campaign speech which the Colonel had just made in Sherman's favor: "I want to pay a passing tribute to his [Sherman's] father. There has not been a more patriotic, public-spirited citizen or a better man adorn this generation than Judge Hoar. When, at about the present age of his son Sherman, he broke away from the Whig party, then panoplied in wealth and respectability — he broke away from them because of their sordid pusillanimity. They were in just the condition that the Republican party, I believe, is in now. He broke from many friends in order to satisfy the dictates of his conscience. And that monitor has guided him ever since."

The Judge took very hard the bad example, as he held it, of his old friends Forbes and Lee in the Blaine campaign, who had done noble work with him for the country in the war. Lowell also had said, "I am proud that it was New England that defeated the New England candidate"; but the Judge seems to have let him alone, and he went to Spain as minister soon after. But the Judge had come to feel that all hope for the country continued to lie in the Republican party, and this feeling seemed to close his eyes to the corruption that gradually creeps into a party long

possessing power and patronage. This extract from a letter to Mr. Forbes urging him to come to Naushon and recruit his strength, shows his feeling, yet good-naturedly, knowing Mr. Forbes's virtue and strength.

"Don't imagine that I am any such broken-down, gloomy, despairing old codger as that one for whom you tried good advice and a change of air so successfully. On the contrary, I am serene as a summer morning, cheerful as a huntsman's chorus, and — looking back upon a well-spent life mainly devoted (aside from getting a living) to the support of the Republican party, — look forward with pious trust to whatever blessings may yet be in store.

"As to your pretending to be nearly old enough to be my father, unless upon the maxim of the law that *malitia supplet ætatem*, and that the length of life is to be reckoned by its amount of pure cussedness — it's all nonsense, and one of those delusions which attend otherwise excellent men who have poor health and vote the Democratic ticket. You may be a mere trifle my elder, but how much satisfaction it would give me to know that, in many particulars, you were as wise — for example, that you played whist as regularly and well — smoked cigars with as much comfort, and avoided the Democratic party with the steadiness and constancy that I try to exhibit. . . . I am delighted to hear that you have the new lease

of life you speak of, and hope you will go back to all your good old ways and stay *there* indefinitely."

Shortly before this, the Judge had written to the Senator, stern at the time as a party man, such palliation as could be offered for his nephew's apostasy, as he deemed it: —

"Sherman seems to be in for it. He told me that he would not be a candidate against Banks, nor against any other reputable Republican. But Fox seems to be thought by some people a disreputable choice, whose success is to be assured, if at all, by money and corrupt trading with the enemy.

"So the contest in the 5th District will be between a man of Republican opinions and Democratic methods on one side, and one of Democratic opinions and Republican methods on the other."

Mr. Evarts wrote to his cousin at the time of the Golden Wedding: "Your good state of Massachusetts seems to have been well swept, but apparently only garnished in the person of Mr. Sherman Hoar. The result of the election places you in a central and probably solitary relation to lineal representation in our government. You are the grandson, and the son, and the father, of a Congressman, and are yourself a Congressman; and, as Roger Sherman was in the first Congress, and your son Sherman (will be) in the next, the

whole period of a hundred years seems to have been subtended by your family; the only reason there has been no more of them is that there have been no more generations in a hundred years."

The Judge's chronic astonishment at Independents — who had received inspiration from his conduct at a similar crisis in his youth — finds expression in this letter to Mr. Forbes who had urged him to come to the Saturday Club and bring Sherman, then in Congress, as guest: "I shall try to attend. . . . My compunctions about executing your commission respecting the Hon. Sherman Hoar, M. C. (whom I do not consider a reputable person to be seen with about these days), will fortunately cause me no embarrassment; for, as I was spelling out your abominable handwriting at the tea-table, he overheard the part of your letter which concerned him, and said it was out of the question, as he had a previous engagement (and no doubt a worse one) for next Saturday.

"It is more and more an astonishment to me how anybody that was the friend of Whittier, and knew and valued Grant and Sherman and Sheridan, and believes in honest money and keeping the public faith, can encourage young men to hitch themselves on to the Democratic party! As for improving *it*, you might as well turn in a few lambs to improve a pack of hungry wolves. Well, God bless you! and improve your sight, for you

are one of the very few cronies I have left, and 'there are glimmerins o' sense in that Dougal creature.'" [1]

The tenderness for his youngest boy, and for the friends whom he could not but trust and honor, always shows through his reproofs.

Yet it is remarkable that the Judge was so kindly tolerant as he was, considering the trying nature of the infirmities that were increasing on him. He was driven to Sharon Springs for relief, such as it was, and thence wrote: "Gout is horrid — and only persons of angelic disposition, *like me*, appear to advantage under it."

Colonel Henry Lee so well appreciated and understood Judge Hoar that his words may be quoted here.

"His faith in his town, his state, his church, his college, his class, his political party, was absolute; so profound were his convictions, so strong his attachments, that he seemed to mistrust the sanity or sincerity of those who questioned their superiority.

"The assumption was naturally offensive to those of other nativities, or to those who had conscientiously arrived at other conclusions on matters religious, social, or political, and was taken too literally by those who were devoid of a sense of humor, or not well acquainted with his

[1] Baillie Nicol Jarvie's remark about the Highland turnkey of Glasgow jail, in Scott's *Rob Roy*.

complexities. For while it was difficult to trace the boundary line between his settled convictions and his cherished illusions, to distinguish between the sallies of his wit and the utterances of his righteous indignation, those who had known him best allowed for the mixture.

"Writing to one whose political debasement he had often deplored, he says: 'I never expect to find anybody in this world who is always right; (with the possible exception of one whom modesty forbids me to mention), I have never yet found one. And as I grow old, I am more and more disposed to content myself with the admirable qualities of my numerous and excellent friends, and am caring less for their short-comings.'

"This was his creed; nobody had ever been so blessed in his home, his friends, his surroundings; they were incomparable, and his heart beat with gratitude and love."

In this memoir the Judge should be pictured, as he is remembered with pleasure and with pride, in his own loved town. He was a tall, well-made man, yet a little heavy in gait and motion, at least in the latter half of his life. A columnar erectness, with broad front, like a male caryatid, symbolized his strong uprightness. This likeness was increased by the fact that, though sedentary, he never allowed his head to stoop. It was placed, and remained, erect upon his shoulders, seldom turning. He was more likely to turn entirely

towards the person with whom he spoke and bring his searching blue eyes upon him. His brows were level, his face absolutely under command, and his mouth firm shut. Through his gold-rimmed spectacles he seemed to look into the person before him. He had a dignified presence, which could be formidable, and yet surprise by genial and affectionate expression. His features were good, except the conformation of the jaws which injured the lower part of the face, yet this, except the upper lip, was in later years concealed by an unusually becoming beard. His hair was a handsome light brown, which must have been yellow in early youth. All together he was a fine-looking man, as Custer's portrait and French's bust show, and resembled singularly Raphael's portrait of Pope Julius II.

The white beard and silvery hair, abundant until the end, gave yet more dignity to his later years.

He was always a loyal citizen of his native town. He died, and his life was spent, within a few rods of the house where he was born. His father's house, his own house, the home where his wife was born and lived, the school where he fitted for college, were all within a circle of less than twenty-six rods radius. Small wonder that his local attachment was strong. In those early days, when Concord life was mainly within its borders, agricultural, with the needful local

trades and some small factories, the heads of the learned professions made a potent triumvirate. Minister, squire, and doctor stood for the laws of God, of man, and of health. They were drawn much together, and their fields of work seemed to overlap. In old New England the man of God had highest honor, and Judge Hoar, brought up under Dr. Ripley's pastorate, always regarded him who held the office of minister of the First Church in Concord entitled to high respect, even apart from his personal qualities. To Mr. Frost, Mr. Reynolds, and Mr. Bulkeley in turn, he was an attentive listener, a strong supporter, and a kind friend. With Mr. Reynolds he had longest and closest relation.

Old Dr. Hurd no doubt ushered Rockwood Hoar into the world, and duly administered castor oil, paregoric and squills to his infant ailments, and, in adolescence, harried acute diseases with blue mass and tartar-emetic, or soothed with Dover's powder; but from the time Mr. Hoar was married, the young Dr. Bartlett became his family physician. He was a comfort and strength in ordinary domestic emergencies or the days of more alarming illness, until the time of his death thirty-seven years later.

The Judge, Dr. Bartlett and Rev. Mr. Reynolds were warm and constant friends. For many years, on pleasant evenings, if the Doctor were at leisure, he would walk or hobble up the Main

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Street to drop in for a chat with the Judge and his wife, and then go on to Mr. Reynolds's. This was especially true during the Civil War, with its anxious interest for all. In his memoir, Mr. Reynolds has told how the Doctor never failed, on the last evening of the year, to have paid every cent of debt from such collections of old and new debts as he had been able to make, and thus knew exactly how he stood in the world. His son tells me that Judge Hoar, knowing this, never forgot to pay his bill that evening, when in town, coming in person to the Doctor's office. On the last day of the year, at the age of eighty-one, the good Doctor, broken and feeble, after visiting very sick patients, got out of his chaise for the last time, went into his little office and settled his accounts with the world painfully, then went into his house and lay down on his bed, to die five days later. His sons, scattered at their business in various cities, came home, and in the evening after the funeral were invited by the Judge to come to his house, where he expressed to them his love and honor for their father, and his gratitude for his long and faithful service to him and his.

In the small and still mainly homogeneous Concord before the Civil War, what might well be called the old Town-Family yet flourished, in spite of some political and religious differences and neighborhood bickerings. New blood, native and

from over sea, was beginning to quicken and enlarge it, but happily the standards, set high by Bulkeley and Willard, were there, and Samuel Hoar and Rockwood his son after him upheld them before the people.

Among the elevating institutions of the village was the Lyceum, founded in 1829. Its serious character, and the remarkable men of its epoch who spoke there, were described by the Judge when he presided at its fiftieth anniversary; also that Rockwood Hoar, aged twelve, was the fifty-seventh and last of the original signers of its constitution. When in town, he was a regular attendant. From his speech introducing the orator of the occasion, comes this characteristic fragment of his eloquence: —

"I had nothing special to say to you — but there is a great deal that comes into my thoughts, as I look back over these fifty years. The air is full of ghosts, and the heart of memories, many of them very tender and pathetic."

When young Middle Street rudely brushed the old academy from its path in 1850, Judge Hoar built a small school-house, comfortable for its day, to meet the constant demand for a private school of better standards than the public schools of that day. At present it humbly serves the cause of letters, but thirty paces from its original site on the Sudbury Road, a handmaid to the Library. The little schools of Miss Helen Maynard

(afterwards Mrs. Joseph Keyes), Rev. James Thurston, and finally the very successful and attractive school of Mr. Sanborn, found their home there, and the Judge's four elder children and eight of his kin were among the scholars.

Of the little Town Library, established by the fathers of the town for the preservation of the Book of Martyrs and other edifying works, Judge Hoar was one of the guardians for twenty-one years, and chairman for the ten years preceding its transfer to the new building given by Mr. Munroe. When the new Library was incorporated, he was on the board of trustees, and the following year presented his report to the town, as president of that body, which office he held for the rest of his life.

In the earlier days of his practice he served for several years on the school committee, of which he was for a time chairman. He was, however, too busy a man and too much away from Concord during most of his life to serve the town in any of the regular offices, but on great occasions she always looked to him as her most able and efficient son.

But of the Church of the fathers he was the chief pillar, and his wisdom helped to guide the councils of, and his liberality to support the worship maintained by the First Parish of Concord. That worship had passed from tempered Calvinism, slowly and almost imperceptibly modified

by Arian and Arminian influences, to Channing Unitarianism, soon to undergo further evolution. Conservative by temperament, he naturally accepted the forms of worship that he found. Belief in the one God, faith in a future life, homage to the beautiful life and teachings of Jesus, justice, mercy and love to his fellow men, — these were in his religion. We do not know how far his critical mind allowed him to go on minor points of belief. These were enough, and were active forces in his life.

His niece, who in her school days lived much in the family, speaks of "the power in Uncle Rockwood of a strong inherited religious faith, for, though he made that faith his own, it was his fathers' God, interpreted by him, that he worshipped, and the faith soothed his irritable nerves and gave him in disappointment and sorrow a dignified quiet. He said to his sister, 'Do you remember in father's prayer, "Let nothing temporal greatly move us"? I am trying to keep it in mind.' Those prayers, I know, gave a quiet feeling of personal responsibility for wrong which certainly Uncle Rockwood felt. Judge Lowell says, in his account of Uncle Frisbie (the Senator): 'The Puritan felt himself personally responsible for everything done on the earth. If there was a wrong, he was called to right it, without fear of meddling.'" This was surely true of the Judge; he was by nature a justice of the peace, and of pro-

priety, in the village and wherever he happened to be. Amusing instances might be given, but his presence was such that he was pretty sure to prevail. The knife of his surgery was often sarcasm, but the humor might assuage the cut. It was well said of him that "There were few cases of misfortune or wrong-doing that Judge Hoar felt were outside his province, that he could not do something to help by his advice, his work, or his purse, which always held out marvellously in giving substantial aid when his friends and neighbors were in need." He helped young people to start in life or get an education, and poor men to buy small farms, and like kindnesses, but with all secrecy. His sister Elizabeth said: "Rockwood scatters with both hands and never looks behind."

One of his kindred said: "Few people carry an enlightened conscience into receiving their dividends. When wages were reduced and the same large dividends given to the stockholders in the Waltham Watch Company, and he heard how the hard times bore on some of the workmen, he returned the cheque for his dividend with the request that it be given to some of the suffering employees."

Faith and works were there, daily proofs of a living religion, and observances were punctually regarded. It has been said that the Judge was a pillar of the Unitarian Church in Concord, but so he was in the Unitarian Association. After his

death, Rev. Edward Everett Hale wrote: "He was president of the Conference when I was chairman of the Council first, so that again and again I ran into his office on one or another matter, always to find him sympathetic, and, of course, wise. *But sympathy is worth so much more than wisdom.* He was, as you know, vitally and eternally interested in our affair." Of his letters he says: "Not one but is encouraging and helpful — men are so different in such things!"

When the Judge put the robes of office — so to speak — on to his mind, he felt the duty of fairness, but in the dressing-gown he allowed it the luxury of prejudiced wit. He knew that the doctrines emphasized in the church across the Mill brook had been held by the Puritans, and that the worshippers were alike Congregationalists, and so was mildly tolerant of the "Orthodox" society. When the countrymen of Saint Patrick came in, it was but proper that they should bring their ancient worship with them — moreover, they were socially apart. But the spread of Episcopacy among New England towns was a sore trial to him, and he inclined to treat it as an unwarrantable intrusion. His classmate, Mr. Charles Henry Parker, says that Judge Hoar remarked to him, that he, for one, was not content to go through this world as a "miserable sinner." His attitude was rather the stronger one of the Norseman to his Gods, not willing to be

But their thrall and their bondsman
Who wert born for their very friend.

Rev. Prescott Evarts says that when he came to Cambridge as a freshman, his kinsman, the Judge, kindly urged him to spend his Sundays in his family. Young Evarts answered that he always liked to attend his own church on Sundays, and, as there was then no Episcopal church in Concord, he would come occasionally, but not regularly. The Judge overcame his dislike of the English Church so far as to bid his young cousin come, nevertheless, and he should have the use of his horse to drive to Saint Ann's church at South Lincoln — "Sāt-an's," as young Sam irreverently called it. When, later, an Episcopalian society was formed in Concord and proposed to build the present church, the Judge used to tell of his remonstrance to Bishop Brooks: "Bishop, how is it that, in your liturgy, you every Sunday pray that we be delivered from all heresy and schism, and yet are proceeding thus to break in upon our good record in Concord, where there has been no schism in the Church for two hundred and fifty years?"

But he held the good Bishop in high esteem. In a letter to Senator Hoar, the Judge sent this message to his niece: "Tell Mary to beware of Episcopal wiles. They are a dreadfully conceited set already, and, if they should capture her, I fear their arrogance would know no bounds. . . .

It is such a pity that Phillips Brooks was taken away before he had half converted them to the Christian religion."

Yet the Judge would quote with high approval from the Book of Common Prayer. On the Nineteenth of April, 1875, a member of the Decoration Committee was looking up mottoes to adorn the festal tents, especially those in which the word "Concord" was found. He told the Judge that he had found one in "Paradise Lost," which would be more acceptable in Lexington than here, — to wit:

> Oh shame to men! devil with devil damned
> Firm concord hold.

"Away with Milton!" said he. "Hear the Prayer Book: 'O God, who art the author of peace and *lover of Concord.*'"

In a letter written from Sharon Springs to Mrs. Hoar, in the summer of 1890, her husband thus accounts for his Sunday: —

"As to religious privileges; I have had, 1st, a fish-ball at breakfast; 2d, 'The Christian Register'; 3d, taking up a collection; 4th, an Episcopal sermon by way of dilution of the last-named means of grace. . . .

"I hope Carrie will forward the 'Christian Register' again this week in season for Sunday, for which it is my chief dependence."

It was an era in New England when the air was full of reforms, in religion, in politics, in social

and domestic life, in diet and personal habits, and the roads were thronged by their eager apostles. Judge Hoar, though open to great and commanding reforms, had a great respect for law and order, tested new notions by strong common sense, and his native love for old usage made him throw the burden of proof upon the newcomer. He kept a simple but generous table, befitting his station, retaining but adding to the old New England dishes. Grahamites never made a vegetarian of him, nor did extreme Abolitionists induce him to exclude rice, sugar, coffee and spice, as slave-labor products, nor temperance lecturers persuade him to confound temperance with abstinence. He "came eating and drinking," but was neither "glutton nor wine-bibber." At a feast he liked good wine, and set it before his guests. His friend Sidney Bartlett, the eminent lawyer, had sent Judge Hoar a basket of champagne, *Veuve Cliquot.* In his acknowledgment he said : —

We are not to be hood-winked by talk about "widows." "I spy a pig peard under the muffler" of this *widow Cliquot.* To visit a widow may be a Christian duty, but I know of no obligation to allow a widow to visit you. To be sure, you sent them with their mouths all tied up, and while that lasts no harm may be done ; but I belong to the party of freedom and progress, — shall "remember them in bonds" ; — and, the first one I set

eyes on, shall undo all that, to begin with. You knew I should, and for what follows you ought to be held responsible. But I leave you to your own reflections. . . .

Soberly yours,

E. R. HOAR.

In spite of careful living, the Judge had an unhappy constitutional tendency to eczema and the digestive disturbances that commonly accompany this. His sedentary habit, life indoors, often in the bad air of court-rooms, and the overwork which his responsibilities demanded, made him often a sufferer. His solace was smoking, which he probably overdid. Ordinary medical treatment did little for him, but he put great faith in the inward and outward drenchings of Hopkinton, Sharon and Saratoga Springs, and was, at any rate, helped by the rest, change and amusement. Mr. William Sullivan relates that Judge Hoar told him that, when he entered one of those hydropathic establishments, the first thing that struck his eye was a printed rule of the house forbidding "inmates" to smoke. He hunted up the proprietor and told him that, while he agreed to live there for some time, he wanted it understood that he was not an "inmate." "All right," said the unwary proprietor. Afterwards, when they tried to stop the Judge's smoking, he referred them to his explicit agreement with the proprietor.

"Woman's Rights" was among the new reforms agitated on the lecture platforms and in the papers, not always in an attractive way, and *quasi* male attire of brown, figured gingham worn on Concord streets did not help matters. The Judge's conservative mind with regard to suffrage, he thus expressed in a letter to his brother: —

"I expect much pleasure in reading your 'Century' articles, as you are interesting even when on the wrong side. I do not propose to aid in abolishing women."

When Concord was invaded by alleged manifestations of spirits through hitherto sober tables, —"spirits," as Thoreau said, "which no respectable junk bottle would consent to hold for an instant," — the apostles of the new "rat and mouse revelation," as Emerson called it, were Mr. X, a pocketbook-maker of no other distinction, his virtuous but tartly prosaic sister, an anæmic dressmaker and a rude Irish servant-girl who turned her table-moving to account in "spring cleaning." A lady, greatly interested in the question of future life, suggested to Judge Hoar, that after all there might be something in these manifestations. He remarked: "But you will admit, madam, that this treasure — if it be such — is vouchsafed to us in earthen vessels." Some one retorted smartly on the Judge by saying that he "had to reserve all his credulity for the Christian miracles."

On one other occasion the Judge was walking by the local grocery, and on the sidewalk an overconscientious dog was sitting, who had been left in charge of a wagon while its owner did his errand within. For some reason the dog took offence and sprang at the Judge, tearing his trousers and biting him in the leg. He shook him off and walked on, but as his indignation grew strong he marched back to the store and confronted the owner coming out, to whom he showed his wounds and his feelings in a sharp protest. The owner looked him over slowly and seriously and then said, with deliberation and the air of one who was making full reparation, "The dog was to blame."

The Judge liked dogs, and preserved the fashion, found in old books, of addressing an unknown dog by the generic name "Bose."

In the town meeting Judge Hoar's good sense, knowledge of law and usage, respect for the institution and for his townsfolk, and determination that Concord should act worthy of her name and fame, were of inestimable value. What was said of his grandfather Roger Sherman's wisdom might almost have been said of him in Concord: "His influence was such that no measure or part of a measure which he advocated ever failed to pass." The discussion was not long after the Judge had spoken. A meeting where he was moderator would be creditable to the town. To one

who persistently repeated a motion, which the Judge uniformly ruled out of order, and who finally said, "When will this motion be in order?" he replied, with grave urbanity, "After the meeting adjourns."

In the Social Circle, a neighborhood club meeting at the houses of members, the Judge took much pleasure at ease among friends and neighbors, and his wit burnished while his wisdom strengthened that society. Mr. Emerson, soon after he became a member, had written to a Boston friend: "Much the best society I have ever known is a club in Concord called the Social Circle, consisting always of twenty-five of our citizens, doctor, lawyer, farmer, trader, miller, mechanic, etc., solidest of men who yield the solidest of gossip. . . . I do not like to be absent from home on Tuesday evenings in winter."

When, in 1882, on the evening of the vernal equinox, the Social Circle met at the house of Mr. Reuben Rice to celebrate its hundredth birthday, and, strangely enough, all the members were present, — the only time in the memory of the oldest member, — Judge Hoar presided. It is needless to say that he did so with dignity, wit, and tact. That occasion was further notable because, by the vote of the Club, the president was able that night to "welcome the wives and daughters to whose household cares and labors the Social Circle has been so often and so much indebted."

He ended his introductory speech thus pleasantly: "With cordial good wishes to each other, and tender and respectful memory of our honored predecessors, at this dividing point in two centuries, we meet 'to report progress and to ask leave to sit again.'"

The Library had the benefit of his wisdom and active interest up to the last year of his life.

When the endeavor was made to found an Antiquarian Society, in order to secure the valuable collection made by the late Cummings Davis, increase it, and preserve perishable objects and passing memories of earlier times, Judge Hoar was one of the five original life-members, whose subscriptions made the organization of the society possible.

He built houses on the field northwest of the Fitchburg station; and as these afforded homes for the newly arrived Scandinavian settlers, gave the pleasant name of Elsinore to the street, which the town adopted.

He saw in the later years of his life with a natural homesick regret the inevitable change which converted the Concord of his youth, the village of plain living and high thinking, into a suburban town of twice the size, and of mixed nationalities and diverse social standards. At the celebration of Concord's two hundred and fiftieth birthday, on a September day of wonderful beauty in 1885, this feeling came to the surface a little

in his expressed doubts whether the town were helped by importing a state prison at its western part and a school of philosophy at its eastern. But it must be remembered that then he was depressed by feebleness and actual suffering. He was courteous and neighborly to the newcomers when he met them, and saw the excellent service rendered by many of them to their adopted home.

During the Butler campaign a Mr. Shortle made a speech which aroused Colonel Henry Lee to make this answer: "At the Republican conference, Mr. Shortle of Provincetown said that 'no man who could only be approached by those within certain walks of life, who represented not the Republican party, but only a peculiar shade of blood, a few families on Beacon Street, would get his vote.'

"As to Beacon Street, living there is a presumption of wealth, nothing more. Whatever the merits or demerits of the dwellers in Beacon Street, who are only distinguished by that success in money-getting which Mr. Shortle and the majority of men strive for, Judge Hoar will be amused to learn that he is their representative. I have known him for forty-two years, and I have often qualified my praise of him by charging him with an undue severity on city men and city ways, an almost aggressive simplicity and disregard of the little graces.

"If one wants to see Puritan principles carried into practice, let him visit Concord and witness

the noble frugality and quiet dignity of that small circle of highly endowed and highly educated men and women to which Judge Hoar belongs, and which is characterized by those virtues easy to admire, hard to practise, even by Mr. Shortle."

There was one institution which for thirty-seven years was a chief refreshment to the Judge from hard work in the profession, and a solace in days darkened by political danger or civil war. More than that, it was a focus of good sense, wisdom, and high patriotism whence sprung many measures important to the country. This was the Saturday Club. The original company of four or five came together naturally and each suggested a friend or two; sympathy rather than eminence was the bond. Before 1857, the Club had no officers, and no formal elections for several years. These early members were Lowell, Longfellow, Holmes, Agassiz, Richard H. Dana, Jr., Motley, Professor Peirce the mathematician, Dwight the musical critic, and Whipple the literary critic, President Felton of Harvard, Samuel G. Ward, a banker and man of culture, Horatio Woodman, a trust lawyer with literary aspirations, but conveniently conversant with the contents of Parker's larder, and, from Concord, Judge Hoar and Mr. Emerson. The next two decades brought in Hawthorne, Prescott the historian, Whittier, Tom Appleton the wit, Charles Eliot Norton, John M. Forbes, Dr. Howe the philanthropist, Charles Sum-

ner, Governor Andrew, Martin Brimmer, Eliot Cabot, Fields the publisher, Hunt and Rowse the artists, Charles Francis Adams, Sr., Francis Parkman, Dr. Gray the botanist, President Eliot, President Rogers of the Institute of Technology, Judge Horace Gray, Howells, Godkin, Senator Hoar, and others.

It was a brilliant company that the last Saturday afternoons of the month brought together at "Parker's" in the front room on the second floor, — scholars, statesmen, men of law and science, poets, naturalists, doctors, college presidents and professors, artists and men of affairs.

Sometimes military music echoed down from Beacon Hill, and the company left the table to see a Massachusetts regiment march under the windows bound for the seat of war. It was a sort of town-and-country club, the most refreshing to the members from each. Judge Hoar always shone there by his wisdom and especially his wit. It was his delight to enter the lists in conversation, especially with Lowell and Holmes — and with these champions he easily held his own. In Lowell's poem on Agassiz after the death of that great and genial man, he devotes some stanzas to the Club and pictures it with Agassiz presiding, and, describing Emerson, he uses this happy Yankee simile: —

> Listening with eyes averse I see him sit
> *Pricked with the cider of the Judge's wit*
> (*Ripe-hearted homebrew, fresh and fresh again*).

Those dinners were so pleasant that the Club, assembling perhaps at half-past two, often sat more than four hours at table, and there was then no late train to Concord. The Judge solved the difficulty pleasantly by having his man, or, quite often, his son, bring his carryall and big black horse down to Waltham, to which a later train ran. Thus the three townsmen, so different, yet so interesting one to another, had a pleasant drive on the cool country road, moon-lit or star-lit, after the hours at the gay banquet in Parker's hot room. But for this Hawthorne and the Judge would never have met, unless they sat together at Club, and there Hawthorne was merely a handsome picture with living eyes. Emerson too, though his chance for acquaintance was better, probably met his recluse neighbor hardly half a dozen times in Concord after the formation of the Club. Hawthorne's shyness and failing health made his attendance far from regular. Once Dr. Holmes, meeting him soon after he was elected, said he hoped he would join. Hawthorne protested that he was unfitted by nature, being neither a good eater nor talker. "But you can *listen*," said the doctor, naïvely, for he delighted in that prospect; "I *hope* you will come!"

Judge Hoar's brother Edward, after several years' life in California in her early days as a state, had returned home, and not long after had gone abroad with his sister Elizabeth and their

friend and neighbor, Miss Elizabeth Prichard. He married this lady in Florence, and, on their return, he bought a farm in Lincoln near Deacon Farrar's and worked hard there, until our harsh climate began to pinch and stiffen him with rheumatism. He then went with his wife and daughter to Sicily and delighted in their pleasant acres near Palermo until they found the climatic perfection outweighed by the imminence of assassination. So they returned and shared with Miss Elizabeth their father's house, where they were born. Mr. Hoar was only well enough to carry on the small place, but he loved to be in the woods and on the river, especially with his friend, Henry Thoreau. His knowledge of flowers and birds, his adventures of travel and California life, his knowledge of books and his refined nature, kindly though sensitive and shy, made him a charming companion to the few who had the privilege of knowing him.

It was a great pleasure to his brother Rockwood to drop in and spend an hour. One day, at the Saturday Club, Dr. Holmes was maintaining that all people that were worth anything came to the surface, and were known as such. Judge Hoar said, "I don't agree with you. I've a dear brother at home, who is worth a dozen of me, whom nobody knows — and, if it were polite, I might add, so have you." He was speaking of Mr. John Holmes, the Doctor's younger brother, always a bachelor and living quietly with his aged mother in the old

house on Cambridge Common as long as mother and house remained. He was a gentle, shy man with several physical disabilities, yet with an affectionate nature, a modesty, a sweetness, and a quaint humor that made him more beloved by the few who knew him than his brilliant brother. John Holmes seems to have been much like Charles Lamb, except for the main failing of the latter. John and Oliver Wendell were good examples of humor and of wit respectively. Strangely enough, when John was praised, the Doctor always looked a little puzzled, as if he didn't quite recognize the man his friends described. They took great delight in him. John Holmes, Lowell, the Judge, and Charles W. Storey were great cronies all their lives long. Whether or no Judge Hoar often indulged in writing verse, he certainly wrote a charming one in his later years to his friend.

JUDGE HOAR'S POEM TO JOHN HOLMES

There came a man, sent from God, whose name was John.
4th *Gospel*, i, 6.

There is but one John.
James Russell Lowell.

And surely I think we know him,
And could guess from whom he came,
For he bears his credentials with him —
Not in earthquake, wind and flame,
But the still small voice which ever
Befits the message divine.
The servant, who stands and waits
By the swiftly hurrying line

Of the winged host, serves as well
As speeding Angel or Man,
And the quiet may bring a message
Which the noisy never can!
He was sent to Us! to the life-time
Of each he has added cheer,
And has helped us join in saying,
"Methinks it is good to be here!"
So modest and shy and patient,
So willing and wise and true, —
We are glad that, when God sent him,
He was willing to send us too.
Now whenever you take the journey
That leads through the shadows dim,
Please say to the One who sent you here
That we're much obliged to him.

Lowell could not come to the Judge's golden wedding, being himself far from well, but sent his greeting: —

"No need to say how glad I should be were it permitted to be with you to-day. But after drawing for seventy years on what seemed an unlimited income of life, I find myself put under guardianship and on an allowance, to make the two sides of which meet demands a watchful frugality. You, if ever any, may look back on a life full of honor because it has been full of indomitable public spirit and of public and private service. . . .

"It is fifty-two years since I first knew you in Concord and saw the foundation laid of the home whose continued felicity is commemorated to-morrow.

"The Musketaquid has often made a silent but not ineffective third in our talks at the foot of your garden. Whenever it has been my good fortune to see it, it has reflected serene and happy skies. I cannot think of you without thinking of it also, and heartily praying that the current of your life may flow on to the end under heavens as prosperous as those that gladden my memory."

Soon after, at the Saturday Club dinner, November 29, 1890, Dr. Holmes as usual sat at the head of the table; Judge Hoar at the opposite end. As the company broke up, the Judge came down to speak with the Doctor, who called him to account for not having properly acknowledged a glass of champagne that he had sent down to him.

The Judge maintained that he had duly gone through all the forms, and Dr. Holmes was obliged to admit failing sight. He then spoke pleasantly to the Judge about the golden wedding which he had just celebrated, and seemed much moved as he said, "I had hoped that that pleasure was to come to me — to live with my wife until then — *that sets the seal*"; and his voice trembled. The Judge said that he considered it his best achievement, to have secured Mrs. Hoar and to have kept her for that length of time.

Changing the scene rapidly backward in time, and with it the tone, this anecdote of friendship and of wit should be preserved. When the silver wedding of the Judge and Mrs. Hoar was ap-

proaching, his friend Mr. Emerson sent a silver cup as a gift. The Judge was much pleased, but said it must have a motto inscribed ; he meditated, and after a time produced this : —

Pœtæ est poculum præbere ; cujusvis haurire, —

which he thus rendered into the vernacular, "It is the part of the Poet to give the cup; any fool can drink from it." Mr. Emerson was honored — and amused.

With all the Judge's external steadiness and his moral courage, he seems to have had a dread of physical pain and surgery. Judge William L. Putnam, of Portland, writing to Senator Hoar in 1892, said : —

"I have an extremely interesting photograph of your brother. It illustrates that there is in the character of every man of worth a deep undercurrent, which sometimes comes to the surface only rarely. He called on me one day, telling me he was on the way to the hospital for an operation, which, he said, would be slight. Nevertheless he seemed to be in a peculiarly emotional condition. He remained a long time talking with me. As he was leaving, he said he wished to pass me his photograph, for which I thanked him very heartily. After he had gone, I examined it and found it an extremely characteristic and truthful likeness. In the lower left-hand corner I discovered, in a trembling hand, 'P. P. C.' I have always preserved it with great care."

Monitions that his time on earth was drawing to a close were on him. Yet the operation at the hospital afforded him great temporary relief, improved his health, and largely restored for a time such activity as might have been expected at his age.

There was much correspondence between the Judge and his loyal friend, Mr. Forbes, in their days of advancing infirmities. Mr. Forbes, with his mighty main-spring, believed in activity to the last, and also had reliance on Sir Henry Thompson's good sense as to diet and *régime*. In reply to a letter on this subject the Judge wrote:

Pain and decrepitude are repulsive, but there is nothing for us to grieve at in knowing that "our little life is rounded with a sleep." I take the deprivation of activity very easily, but I dare say you, who have done so much, find it hard to believe that the time for taking in sail is close at hand. It is a good thing to see the lights in the harbor.

Affectionately.

And again: —

CONCORD, *May* 10, 1892.

MY DEAR MR. FORBES, — I was much interested in the plan for keeping old fellows alive, by keeping them at work, which you were so kind as to send me. But the old codger I have to tote about is so infernally lazy, that I have often thought the

best thing for me to do would be to discharge him from my service entirely.

Still, though I have a great contempt for him, he has been with me so long and knows my ways so well, that when with difficulty I have got him up and dressed every morning, I conclude that I will let him loaf round one day more, and have his smoke and read the papers; though I know he is not worth his keep, and is a great deal more bother than use to me or anybody. The plan you suggest has its merits, no doubt, and I believe has been tried on cab-horses with varying success. But on the other hand, taking it easy may suit some cases as well as the whip-and-spur treatment, though I always felt my conscience relieved by applying the latter. Blessed is he who has done his day's work well, and can enjoy the evening shade and coolness without scheming or worry.

Faithfully yours,

E. R. Hoar.

Not being able to persuade the Judge to come down to the autumnal hunt upon his island, Naushon, Mr. Forbes sent his friend a haunch of venison. It was thus acknowledged: —

To Hon. J. M. Forbes

Dweller in the forest and the wilderness! Eking out your scanty subsistence by hunting and fishing! No doubt at this moment exulting in

the thought of that stag, and saying to all comers, "*Veni!* (or, if not Veni himself, at least Veni's son) *Vidi! Vici!*" What splendid bounty you show in forwarding such a share of the fruits of the chase to the humble dwellers in Concord, unused to such luxuries. But are you sure that your own stock of provisions will last through the winter? How can I sit down before that haunch, when roasted, if I think that the munificent giver may himself be at the brink of starvation before Spring? Be sure, if any such catastrophe should be impending, to let me know it seasonably. I might spare a few turnips and potatoes to help you through. Meantime, I rest your anxious but obliged friend,

E. R. HOAR.

Again, in the last year of the Judge's life, when his infirmities were troublesome, Mr. Forbes sent him another haunch. He said in his letter of thanks, "Perhaps you are to such an extent a disciple of our old Concord philosopher, . . . A. Bronson Alcott, as to think that some of the qualities of an animal are imparted to him who feeds upon its flesh; and so, noticing how poor and halting was my present supply of legs, have intended, if possible, to contribute to their improvement. 'Oh! had I the wings of a dove!' said the Psalmist; and how blessed it would be if my cry, 'Oh! had I the legs of a deer!' could be in any degree realized."

His courage, wit, and affection shine out so bright in these later letters that it is better to read his words than words about him. He wrote to Mr. Emerson's daughter, Mrs. William H. Forbes of Milton, answering her invitation to be present at some private theatricals given in honor of the sixtieth anniversary of the wedding of Mr. and Mrs. Forbes by their children and young kindred. The play was a dramatization of Scott's "Legend of Montrose."

CONCORD, *January* 25, 1894.

MY DEAR EDITH, — Don't I wish I could! It is very good of you to think of me but I doubt whether you know how old and feeble I am.

My social relations are limited to going to meeting, attending the Saturday Club (for a couple of hours, and at a tavern) and the Social Circle in Concord, close within reach of home. Otherwise I am "closed for repairs" — which I fear are not likely to be made.

This is, I know, a doleful Jeremiad to send in return for your bright and cheerful note of invitation, which cheered me to receive, and cheers me again every time I look at or think of it.

My spirits are pretty uniformly good. You may have seen in old museum collections fragments of old rubbish *preserved in spirits.* Well, I guess that fits my case pretty closely. I have not lost my taste for good society, though I left off visit-

ing my sister (in Cambridge) two years ago, and see that delightful Milton is also a sealed book. "The spirit is willing, but the flesh is weak."

So with the assurance of my highest honor and warm personal regard for that eminent portion of Christendom which we called Forbesdom, and the deepest regret that I cannot see "Vich Ian Vohr with his tail on," [1]

I am, my dear,

Affectionately yours,

E. R. Hoar.

One solace that remained to the Judge as long as he could come downstairs must on no account be forgotten. He delighted in whist — the whist of old times. It must be played with all due respect; it was serious business, and when, in his own or a neighbor's house, a *partie carrée* had been formed, idle callers seemed an impertinence. Every evening in the week, if the Judge were at home, the game was played. It was a sore cross to him if debates at Parish meeting, or the lecture at Lyceum took too much time, and ten o'clock came all too soon on the interesting game. At different times the sets varied, but the principal players were Mr. Rice, Mr. Fay Barrett, Rev. Mr. Reynolds, Mr. Edward Hoar, Mr. Wheildon, Mr. Alfred

[1] The expression used in *Waverley* by Fergus McIvor's henchman, to signify the Chief at the head of his clan. The Forbes family came from Strathdon on the edge of the eastern Highlands of Aberdeenshire.

Munroe, and Mr. Quincy Browne. One of the Prichardesses, as the Judge called his neighbors, the Misses Prichard, to whom he was as a brother, might be called into the smoky and exacting atmosphere over the tables, or the press-gang be sent out to seize and drag in some neighbor of the younger generation to fill a vacant place, and, when there, he had to mind his *p*'s and also his *q*'s. From these games came much refreshment to the Judge's weary mind and body.

But age and infirmity by no means made Judge Hoar indifferent to town affairs. In the summer of 1894 it was proposed by the ruling magistrates that the State Highway Commission assume the care of the Main Street in Concord on the ground of "public necessity and convenience." If the Judge's feeble feet were not stirred to attend the meeting, his wrath was. He sent to a young fellow townsman a written opinion to quote there, and it had its effect:—

Public necessity and convenience require! Is the condition of the people of Concord so *necessitous* (even according to the private meditations of the Selectmen) that we cannot afford to keep our chief thoroughfare in good working order! Convenience? Is there a better or handsomer street than our Main Street easily to be found in the Commonwealth; or any probability that it would be more convenient to anybody by giving it away

from the care of those that love it and take pride in it to the control of a board, however competent and respectable, who have no special interest in it?

I think not.

Very truly yours,

E. R. Hoar.

Less than a year before his death, on Concord's sacred day, that year christened "Patriots' Day," Judge Hoar's pride and patriotism flashed out from among the whitening ashes of his life. He told in detail how through a long life he had shared in all Concord's public celebrations of the anniversary. Then, after speaking of the many days that Americans might fitly call Patriots' Day, he said: —

"But this day, the Nineteenth of April, 1775, has a relation to Massachusetts more intimate and sacred than any other day can have; a day on whose anniversary it has been well to provide by law that her children should keep holiday — our Mother's birthday; for on this day, one hundred and nineteen years ago, the Commonwealth of Massachusetts was born."

And in this his last address to the people of Concord he said that the time had come "to end forever all local bickerings and jealousies about the share that one or another town or village or hamlet had in the events which have given to that day its imperishable glory."

His peroration should be recorded. "Washington left no posterity, but every true American calls him father. And so I would urge that on this memorable day concerned with memories and events which should be dear to us all, every citizen of the Commonwealth who prefers honor and public service to selfishness and ease, who loves liberty and will resist tyranny without counting the personal cost, wherever he was born and of whatever lineage after the flesh, — that every true son of Massachusetts should have a right to call himself, and is, a son of the American Revolution."

He wrote, from time to time, letters to old friends or classmates recalling pleasant memories, but they were really saying good-by. To one he wrote :—

"Thinking of you reminds me of what a peculiar and curious relation is that of classmates. We came together in our early youth, more than sixty years ago, from various places and surroundings; filled ourselves up with what modicum of sense and learning each might get hold of, and then put to sea on our respective voyages, seeing little of each other — nothing more than an occasional hail or signal, or a short touching at some port on the way — and at last, one by one, anchored at our destined harbor, there to take account of our voyage, and settle with the OWNER. But we of 1835 have always felt we were a part of the same

fleet and were always ready to 'stand by and lend a hand.'

"Now I am a pretty feeble old codger, and bringing a battered old craft to the end of its voyage. But I love to think of the successful lives of my classmates — by which I don't mean making a noise in the world, much less getting into possession of lots of money. . . .

"To have been a gentleman and a scholar, a man of refined tastes and absolute uprightness, whose influence and character have been a power for what is best both in public and private affairs — that, to my thinking, is a successful life to look back upon after eighty years; and, as Dr. Palfrey put it in his Bacclaureate sermon, 'that is to be a worthy son of Harvard College.'"

To another, the Hon. Charles W. Palfray of Salem, he wrote but four weeks before his death thus pleasantly: —

CONCORD, *Jan.* 1, 1895.

DEAR CHARLIE, — It looks as though I should never be out of my house again, hardly, according to the doctor's ideas, out of my bed-room, and perhaps not many days out of my grave.

My little stock of cigars, like the faithless wretches they are, seeing this cheerful prospect, retired in good order, and pretended they never had anything to do with it.

But I think they had better go to you, and trust

to your kindness to give them their deserts. The box inside, containing 30-odd, are supposed to be very decent, but use your own judgment about all of them. Because I am going to kick the bucket is no reason that you should kick the box.

I had hoped to see the fellows at one more Commencement, to wit, our sixtieth, *sed Diis aliter visum.*

Faithfully yours, old fellow, as to the goal in foot-ball, and over,

E. R. Hoar.

Now, in the words attributed to Orpheus, "that white flower which marks extreme old age" had crowned our first citizen, but, though his body was growing useless, his mind burned clear, and his spirit was unsubdued.

He had borne a great grief, — Mrs. Hoar had gone before him. Now he lay down on his bed, brave, but a little impatient at the slow advance of death. He was skilfully and lovingly tended by his daughter Clara, who had chosen to take the training of a nurse in the Boston City Hospital a few years before. His two other living daughters were not far away, one at home and one with her family in Springfield, and his oldest and youngest sons, both men of character and ability and of good standing in the law, and both married, were at hand to take up, as far as might be, the load their father had laid down. His son Charles was

far away, a man of consideration and influence in Southern California. For some years, the Judge had had the pleasures which come with grandchildren.

In the tedious waiting for death he was brave and considerate. Arousing from sleep, he said to his daughter nurse: —

"When I wake up I see you standing over me with an expression, half of firm faith in Divine Providence and half as if you were afraid you could n't go it alone."

His sense of humor remained throughout. He said one day: —

"I am engaged in the not disreputable, but far from attractive, business of dying, and I have one quality especially suitable for it — I have plenty of leisure to attend to it."

His daughter wrote: "Father said he had no fear of the mere stopping of life, but he had a dread of pain — all *that* ends with death. Then he quoted these lines — he did not remember the author: —

> "'Fear ends with death. Beyond
> I nothing know but God.'"

Another time he said: "They can do what they please, but they can never make dying either popular or fashionable. I have had the use of this body a long time; I have had a happy life, though some of it might have been better, I suppose."

His daughter said: "You have made many

others happy." "That was part of the happiness," he answered.

On the last day of January, 1895, the strong spirit was released from the worn-out body.

Of the funeral, in which Town, Commonwealth, and Country had a part, a lady, a cousin and contemporary of Judge Hoar, wrote thus to his sister on the following day: —

"And surely no king could have had a more royal burial — the seal of a noble life. The closed shops, the silent streets, the simple church with its wealth of flowers, the few fitting words and lovely music — above all, that great, almost endless, procession of men and women, young and old, who wished to see the loved face again.

"It made me think of a sermon of Bishop Lawrence's . . . in which he said he thought the best obituary notice he ever read was that upon David: —

"'And David served his generation according to God, and fell on sleep.'"

As a citizen, Judge Hoar held high the old and honored standards, and kept others to them. He did his duty, following his conscience in all and always postponing self. He was mindful of others.

As a man of law, he will be remembered as having administered the law of the land faithfully, while he construed it broadly, and always recognized and bowed to the Higher Law.

As a statesman, he was one

> Who never sold the truth to serve the hour,
> Nor paltered with eternal God for power.

He seemed most to resemble Cincinnatus, a man to whom in any emergency his fellow citizens turned and who never failed them; who at the call of his country, his state, or his town left his plough in the furrow, and when the emergency had passed returned to it again; who never sought office or emolument, and who never, in the evil fashion of to-day, advertised himself, or strove for personal reward; who was always true to the high ideals of Massachusetts, and never shrank from any encounter with evil or evil men for fear of the consequences to himself. He was uncompromising in support of the right, inexorable in opposing the wrong, and yet gentle and kind to any one who needed help. Under a stern exterior lay a very tender heart, and his spoken and written words, now pungent and cutting, now singularly touching, reveal his many-sided nature. Unlike Sumner, who with untiring industry ransacked ancient and modern literature for quotations which should support, illustrate or ornament his argument, the Judge, perhaps more indolent, was content to rely upon what he found in himself, like Lowell's ideal of the "stalwart man . . . fed from within with all the strength he needs." He was a master of English, and no one better than he could use the exact word which his meaning

called for. No one was more felicitous on occasion, whether his speech was humorous, earnest or sad.

His friend William Endicott wrote of his speech on April 19: "I have read it with interest and approval, a remark that I think I can truthfully make of everything of yours spoken or written that has come to my notice during the last fifty years"; and many Massachusetts men and women could echo this statement.

The words of the prophet shall end this story of a life:—

> Let us now praise famous men . . .
> The Lord hath wrought great glory by them . . .
> Men renowned for their power, giving counsel by their understanding . . . Leaders of the people by their counsels, and by their knowledge of learning meet for the people, wise, and eloquent in their instructions . . . *There be of them that have left a name behind them.*
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> *Ecclesiasticus*, xliv.

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